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CIVIL DOCKET

UNITED STATES DISTRICT COURT

DOCKET ENTRIES

A 71 CA 149

Jury demand date: TR- 5386 Tyler

J. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
DIANA REGESTER, ROBERT G. MIMS, B.C. CLAYTON, and STEPHEN E. McCONNICO VS. JOS. [illegible]OCK, SECRETARY OF STATE OF THE STATE OF TEXAS, ET AL, TR- 5386 Tyler	For plaintiff: Tony Korioth 315 Westgate Bldg.,1122 Colorado,Austin,787((withdrawn) Oscar H. Mauzy, Mullinax,Wells,Mauzy & Babbs,Inc., 1601 Natl Bankers Life Bldg Dallas, 75201 Clinton & Richards ,David R. Richards 601 W. 7th, Austin 78701 Robert W. Hainsworth Alvin Bldg 3710 Holman Ave. Houston 77004
JUDGES: Irving L. Goldberg 749 3514 Rm. 13-C-6 U.S. Courthouse 1100 Commerce St Dallas, 75202 William Wayne Justice 597 9387 P.O. Box 330, Tyler 75701 John H. Wood, Jr. 224 2753 P.O. Box 2616 San Antonio 78296 THREE-JUDGE Geo.Willeford & Fene Diedrick: R. James George,Jr. Box 98,Austin 78767	For defendant: Samuel D. McDaniel, Staff Legal Asst. P.O Box 12548, Capitol Station, Austin 78711 Roy Orr: Earl Luna, 1002 Dallas Federal Savings Bldg., Dallas 75201 747 1582 Thelma J.Washington,et al:Walter L. Irvin 301 N.Market,Dallas 75202 742 1631 Cleo Steele, 2818 Pennsylvania,Dallas 75215 214-421 710 Ed Idar,Jr.,319 Aztex Bldg.,211 E. Commerce St.,San Antonio 78205 Frank Hernandez,300 Southwest Bldg., Dallas 75202 Dick Reed, et al: Clower & Stanford, Ron L. Clower, 1212 San Jacinto, Dallas 75202 Samuel G. Kail, et al: Roach & Robertson, L. Roach, 2620 Republic Natl Bk.Tower,Dall 214-741 5888 75201

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed 1-1-72	Clerk		3-27-72	Sam McDaniel	5 00	
J.S. 6 mailed 2-1-72	Marshal					
Basis of Action:	Docket fee					
Constitutional Rights; Challenging apportionment	Witness fees					
~~Reps for House of Representatives~~ Action arose at:	Depositions					

DATE	PROCEEDINGS	Date Order Judgment
Re-filed		
12-17-71	1- Order constituting three-Judge Court composed Hon. Wayne Justice, Hon. John H. Wood, Jr., & Circuit Judge Irving Goldberg w/copy of Pre-trial order and transfer and consolidating for hearing & submission cases to Western District of Texas, at Austin filed	
12-17-71	2- Pltfs' Original Complaint filed	
12-17-71	3- Order and Motion granting Motion to effect service upon absent deft. J. Burns Brown filed	
12-17-71	4- Order and Motion allowing amendment to Pltfs' Original Complaint filed	
12-17-71	5- Memorandum Brief in Support of Motion to Change Venue and for Consolidation filed	
12-17-71	6- Motion to Change Venue and for Consolidation filed	
12-17-71	7- Deft's Original Answer to Complaint and Complaint in Intervention filed	
12-17-71	8- Original Answer of Deft Roy Orr, Chairman of the State Democratic Executive Committee, to Pltfs' Original Complaint filed	
12-17-71	9- Pltfs' Response to Defts' Motions to Change Venue, Consolidate and Convene a Three-Judge Court filed	
12-17-71	10- Intervenors' Complaint (Thelma J. Washington, Ethelyn Gilbert, Elsie Faye Heggins, et al,) filed	
12-17-71	11- Complaint In Intervention filed	
12-17-71	12- Complaint In Intervention filed	
12-17-71	13- Order and Motion granting Motion to Intervene as Plaintiffs filed	
12-17-71	14- Order and Motion allowing Motion to Intervene (Joe J. Bernal, Leo Alvarado, John A. Longoria, Joe Garza, Albert A Pena, III, Rene Gonzalez, Dario Chapa, George Garza, Rubin Garza, Amador Garcia, Leonelo Gonzales, Rodolfo Pena, Cruz Alaniz, Louis Estrada, Rene Martinez, & Servando Martinez, Sr.) filed	
12-17-71	15- Order and Motion allowing Motion to Intervene (Texas AFL-CIO) filed	
12-17-71	16- Complaint In Intervention filed (Dick Reed, Paul Goodwin & David Moss)	
12-17-71	17- Complaint In Intervention (Samuel C. Kail, C.S. McMillan, Betty Price, Clarke Stroughan & Carolyn Burg) filed	
12-17-71	18- Order & Motion granting Motion to Intervene filed	
12-17-71	19- Order & Motion granting Motion to Intervene filed	
12-17-71	20- Motion & Order granting Motion to Withdraw Tony Korioth filed	
12-17-71	21- Order setting pre-trial conference 12-22-71 9:00 A.M. filed Copies mailed to attys for both sides	
12-20-71	22- Answer of Defts. Dr. George Willeford, Chairman of the Texas State Republican Executive Committee, Gene Diedrick, Chairman of the Republican Committee of Smith County, Texas, and Motion to be Joined as Parties Pltf. filed (copies mailed to three Judges.	
12-22-71	23- Complaint in Intervention (Diane Regester et al), filed. Copies to Judges & Master, sth.	
"	24- Motion to Intervene as Plaintiffs (George L. Allen et al), filed. Copies to Judges, sth, & Master.	
"	25- Order Granting Motion to Intervene (George Allen et al), filed. Copies to Judges, Attys of Record & Master, sth.	
"	26- Intervenors' Complaint (George Allen et al), filed. Copies to Judges, & Master, sth.	
"	27- Minutes of Pre-Trial Conference, filed.	
"	28- Order Setting Time Limits under Rules 30, 31, 33, 34 & 36 of FRCivP, filed. Copies to Judges, Attys of Record & Master, sth. See paper # 12 A-71-CA-142 for Original.	
"	29- Order Assessing Parties for Expenses Incident to Hearing by Special Master, filed. Copies to Judges, Attys of Record & Master, sth. See paper # 14 A-71-CA-142 for Original.	
"	30- Order Appointing Special Master, filed. Copies to Judges & Attys of Record & Master, sth. See paper # 15 A-71-CA-142 for Original.	

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D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judge
12-22-71	31- Oath of Special Master, filed. Copies to Judges, Attys of Record & Master, sth. For Original see paper #16, A-71-CA-142.	
"	32- Order by Special Master Calling for Filing of Alternate Plan(s), filed. Copies to Judges, Attys of Record & Master. See paper # 17 A-71-CA-142 for original.	
"	33- Order by Special Master Setting Pre-Hearing Conference, filed. Copies to Judges, Attys of Record & Master. See paper # 18, A-71-CA-142 for Original.	
12-27-71	34- State Deft's. Motion to Reconsider Appointment of Special Master, filed. Copies to Judges & Master, sth.	
"	35- Deft. Orr's Objections to the Appointment of Special Master, filed. Copies to Judges & Master, sth.	
"	36- Deft. Orr's Brief in Support of Motion to Reconsider & Objections, filed. Copies to Judges & Master, sth.	
"	37- State Defts' Motion in Opposition to Order Appointing Special Master, filed. Copies to Judges & Master, sth.	
"	38- State Defts' Supplemental Memorandum of Authorities in Support of Defts' Motion in Opposition to Appointing Master, filed. Copies to Judges & Master, sth	
12-28-71	39- State Defts' Request for Discovery, filed. Copies to Judges, sth.	
"	40- Order Setting aside Order Appointing Master & Setting Schedule, filed. Copies to Judges & Attys of Record, sth.	
"	41- Order allowing intervention by Tom Crouch et al in A-71-CA-144, filed. Copies to Judges & Attys of Record, sth.	
"	42- Response of Realined Plts., to Request for Admissions (Rule 36), filed. Copies to Judges, sth.	
12-29-71	43- Omnibus Order, filed. Copies to Judges & Attys of Record, sth.	
"	44- Answer to Request of Discovery by Intervenors Kail et al, filed. Copies to Judges, sth.	
"	45- Answer to Request of Discovery by Intervenors Washington et al, filed. Copies to Judges, sth.	
"	46- Response of Pltfs'. Willeford & Diedrick to Defts' Request for Production of Documents, filed. Copies to Judges, sth.	
"	47- Response of Plts. Willeford & Diedrick to Defts' Interrogatories, filed. Copies to Judges, sth.	
12-30-71	48- Plaintiff's Responses to Request pursuant to Rule 36, filed. Copies to Judges, sth.	
12-31-71	49- Plaintiff's Response to Interrogatories, filed. Copies to Judges, sth.	
"	50- Plaintiff's Response to Request for Admissions, filed. Copies to Judges, sth.	
"	51- Plaintiff's Response to Requests for Discovery, filed. Copies to Judges, sth.	
1-3-72	52- Order for payment of daily transcript to reporter filed Copies given to all judges and copies mialed to attys for both sides	
1-2-72	53- Pre-Trial Order filed Copies to Judges	
1-3-72	54- Trial Brief of Deft Roy Orr, Chairman of the State Democratic Executive Committee filed Copies to Judges	
1-3-72	55- Trial Brief Submitted on Behalf of Republican Intervenors filed	
1-3-72	56- Trial Brief for Pltfs Dr. George Willeford & Gene Diedrick filed	
1-3-72	57- Memorandum Trial Brief for Joe J. Bernal, et al, Intervenors filed	
1-3-72	58- Interrogatories filed	
1-3-72	59- Trial Brief filed	
1-3-72	60- Motion for Dismissal or fro Judgment filed	
1-3-72	61- Pre-Trial Memorandum Brief filed	
1-4-72	62- Pretrial Order filed	
1-4-72	63- Record of Proceedings Hearing on Pretrial Conference held 12-22-72 filed (see copy in A-71-CA-142)	
1-4-72	64- Record of Proceedings Hearing on Final Pretrial Conference held 12-31-72 filed (see copy in A-71-CA-142)	

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DATE	PROCEEDINGS	Date of Judgment
1-5-72	65- Pltf Intervenors Brief in Opposition to Motion to Convene a Three-Judge Pannel filed	
1-5-72	66- Pltf. Regester, et al, Texas AF:-CIO Bernal, et al, Interrogatories to be answered filed	
1-6-72	67- Oral Deposition of Mr. Utah Kirk filed (see paper in A-71-CA-142)	
1-6-72	68- Oral Deposition of Mr. Richard Manchaca filed (see paper in A-71-CA-142)	
1-6-72	69- Order filed copies mailed to all Judges and all attys.	
1-11-72	70- Post-Trial Memorandum filed (Letter attached shows copies mailed to all Judges) filed	
1-6-72	71- Stipulation filed	
1-4-72	Trial began, Opening statements List of Witnesses sworn	
1-5-72	Testimony resumed	
1-6-72	Deft. Orr Rest, State Deft. Rest. Rebuttal by Bernal Intervenors, Arguments, Post trial briefs, proposed findings & Submit plans all due 1-14-72. Case taken under advisement	
1-12-72	72 Memorandum of the Amici Curiae filed (with attachments)	
1-13-72	73 Post Hearing Memorandum of Realined Pltfs. Dr. George Willeford, Chairman of the Texas State Republican Executive Committee, and Gene Dietrick, Chairman of the Republican Committee of Smith Co. Texas filed	
1-14-72	74 Post Trial Brief and argument & Proposed single member district plan for Dallas Co. (see paper in A-71-CA-142) filed	
1-14-72	75 Post-Trial Brief of the Pltfs Regester, et al and Intervenors Texas AFL-CIO, et al filed	
1-14-72	76 Proposed Findings of Fact and Conclusions of Law filed	
1-14-72	77 Post Trial Brief and Argument & Proposed single member district plan for Dallas Co. filed (see papers in A-71-CA-144)	
1-14-72	78 Post-Trial Memorandum Submitting Redistricting Plan for Bexar Co. for Joe J. Bernal, etl, Intervenors filed	
1-14-72	79 Post Trial Brief of Bernal Intervenors filed & attachments	
1-14-72	80 Proposed Findings of Fact and Conclusions of Law of Bernal Intervenors filed	
1-14-72	81 Post-Trial Memorandum of Bernal Intervenors Requesting Judicial Notice filed & attachments	
1-14-72	83- Defendants' Brief (see papers A-71-CA-142) filed	
1-14-72	84- Findings of Fact and Conclusions of Law Proposed by the Defts filed (see papers in A-71-CA-142)	
1-14-72	85- Letter by deft. Samuel D. McDaniel with comments on Mauzy Plan and Errors noted in Mauzy Representative Districts Plan filed (see papers in A-71-CA-142)	
1-14-72	86- Post-Trial Brief Submitted on Behalf of Dallas Republican Intervenors filed (with attachments)	
1-14-72	87- Post-Trial Brief for Pltf-Intervenors Washington, et al, filed (see papers in A-71-CA-144)	
1-17-72	88- Legislative redistricting plan of the State Republican Executive Committee pertaining to Diane Register vs. Bob Bullock filed	
1-17-72	89- Single member district plan for Tarrant Co. filed	
1-18-72	90 Order issue check $2,100.00 as partial payment daily transcript Jack D. Sykes filed	
1-18-72	91- Map redistricting plan on a single member basis for Dallas Co., Tex. filed (see papers in A-71-CA-142)	
1-19-72	92- Motion to Intervene as a Plaintiff filed	
1-25-72	93- Deposition pd by Pltf. Regester in amount $361.47 filed (see papers in A-71-CA-142)	
1-28-72	94- Opinion & Order filed	

D. C. 110 Rev. Civil Docket Continuation

A-71-CA-143 (continued)

DATE	PROCEEDINGS	Date Order Judgment
1-28-72	96- Deposition Bob Armstrong (originally filed 1-3-72) (see in A-71-CA-142)	
1-28-72	96- Deposition Ben Barnes (originally filed 1-3-72)(see in A-71-CA-142)	
8-72	97- Deposition Gus Mutcher (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	98- Deposition of Gregory Drew Hooser (originally filed 1-3-72) (see in A-71-CA-142)	
8-72	99- Record of Proceedings Jan 3,4,5,6 filed (see in A-71-CA-142) Vols 1,2,3,4	
1-28-72	100- Oral Deposition of Crawford C. Martin (originally filed 1-3-72) (see in A-71-CA-142)	
1-28-72	101- Deposition Robert S. Calvert (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	102- Oral Deposition Robert Spellings $249.25 to be pd by Pltf) filed (originally filed 1-3-72) (see in A-71-CA-142)	
3-72	103- Pltfs' Motion to Amend Judgment (copies mailed 3 Judges) see A-71-CA-142)	
3-72	104- Affidavit filed (copies mailed 3 Judges) (see papers A-71-CA-142)	
2-8-72	105 Order granting Motion to amend Opinion and Order to rectify clerical errors filed Copies mailed to all attys.	
2-9-72	106- Motion to Allow Payment of Deposition Costs filed	
2-11-72	107 - Notice of Appeal to the Supreme Court U.S. Pltf. Curtis Graves filed	
2-15-72	108- Motion to Allow payment of Deposition costs filed (see paper in A-71-CA-142)	
2-15-72	109- Order granting Motion to Allow payment of deposition costs filed (see paper in A-71-CA-142)	
2-18-72	110- Letter of request to certify complete record & transmit to U.S. Supreme Court along with A-71-CA-143,A-71-CA-144,A-71-CA-145 filed (See paper in A-71-CA-142)	
2-28-72	111- Notice of Appeal to the Supreme Court of the U.S. in Civil A-71-CA-145 filed	
3-27-72	112- Notice of Appeal to the Supreme Court of the United States Preston Smith, Governor of Texas, Bob Bullock, Secty State of Texas, Roy Orr, Chairman, Texas State Democratic Executive Committee & Texas Legislative Redistricting Board, composed of following officials of the State of Texas: Ben Barnes, Lt. Governor, G.F. Mutscher, Speaker of the House, Bob Armstrong, Commissioner of the General Land Office, Robert S. Calvert, Comptroller of Public Accounts, & Crawford C. Martin, Attorney filed Copy certified mailed to U.S. Supreme Court	
3-27-72	[illegible]	
4-9-72	113- Balance of funds deposited Registry Account of Austin Natl Bank be transferred to the Registry Fund checking account with the Treasurer of U.S. Ordered filed Copies mailed to attys for both sides	
7-3-72	114 Deposition Subpoena (Jerry Blair) returned, filed.	
10-19-72	115- Order Supreme Court U.S. that probable jurisdiction for appeal has been considered filed	
11-22-72	Complete xerox copies of all original papers in A-71-CA-143;A-71-CA-144; and A-71-CA-145 along with exhibits under separate cover mailed to U.S. Supreme Court	

SUPPLEMENTAL DOCKET ENTRIES----------		Docket Entry No.
8/72	Jan. 3, 1972 - ORAL DEPOSITION OF Robert E. Johnson, filed.	(116,)
8/72	Jan. 3, 1972 - Deposition of Mark Fisher, filed.	(117)
8/72	Feb. 28,1972 - Deposition of Emmett J. Conrad, filed.	(118)
8/72	Feb. 28, 1972- Deposition of George Boch, filed.	(119)
Dec 8/72	Feb. 28, 1972 -Deposition of George A. Zimmerman, filed.	(120)
Dec 8/72	Feb. 28, 1972 -Deposition of Zan Wesley Holmes, filed.	(121)
8/72	Feb. 28, 1972 -Answers and Deposition of David M. McNeeley, filed.	(122)
	123-Motion of Special Master Schatzki, filed. copy to 3 Judges	

CIVIL DOCKET
UNITED STATES DISTRICT COURT

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TR- CA-3-5241 (Dallas)

Jury demand date: 11-29-71 by Defts
Re-filed 12-17-71

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
JOHNNY HARRIOTT, ET AL, VS. PRESTON SMITH, GOVERNOR OF THE STATE OF TEXAS, BOB BULLOCK, SECRETARY OF STATE OF THE STATE OF TEXAS, THE TEXAS LEGISLATIVE REDISTRICTING BOARD, BEN BARNES, LIEUTENANT GOVERNOR OF THE STATE OF TEXAS, G.F. MUTSCHER, SPEAKER OF THE TEXAS HOUSE OF REPRESENTATIVES, BOB ARMSTRONG, COMMISSIONER OF THE GENERAL LAND OFFICE, ROBERT S. CALVERT, COMPTROLLER OF PUBLIC ACCOUNTS, AND CRAWFORD MARTIN, ATTORNEY GENERAL OF TEXAS TR- CA-3-5241 (Dallas)	For plaintiff: Robert M. Greenberg 1105 Mercantile Securities Bldg., Dallas 75[illegible] 748 5348 (proposed) Intervenor Tom Crouch, et al. Roach & Robertson John L. Roach, Republic Bank Tower, Dallas 75201 741 4888 Thomas C. Crouch, Republic Bk. Tower Dallas, 75201 741 2148 Robert W. Hainsworth Alvin Bldg 3710 Holman Ave. Houston 77004 / For defendant: /Samuel D. McDaniel, Staff Legal Asst. P.O. Box 12548, Capitol Station, Austin [illegible]

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 5 mailed 1-1-72	Clerk								
J.S. 6 mailed 2-1-72	Marshal								
Basis of Action: Violation of Constitution; request 3-Judge Court; Temp. & permanent injunction- reapportionment ~~Action sought:~~ plans of Texas House of Representatives	Docket fee								
	Witness fees								
	Depositions								

DATE
Re-file
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DATE Re-filed	PROCEEDINGS	Date Ord. Judgment
12-17-71	1- Order designating 3-Judge Court, Hon. Wayne Justice , Hon. John H. Wood,Jr. & Circuit Judge Irving Goldberg, w/copy of Pre-trial order and transfer and consolidating for hearing & submission cases to Western District of Texas at Austin filed	
12-17-71	2- Plaintiffs' Original Complaint filed	
12-17-71	3- Motion & Complaint to Intervene filed (Tom Crouch,John N. Leedom,Dr. Mort Jones, William M. Bass,Alfred J. Hill & Mary Ann Collins)	
12-17-71	4- Summons ret'd & filed Ex. 11-2-71 Bob Armstrong, by serving Francis Ballard designated agent, Priddy, Austin, Dep. 4.00	
12-17-71	5- Summons ret'd & filed Ex. Crawford Martin 11-2-71 by serving Alfred Walker designated agent, Austin, Atkison, Dep. 4.00	
12-17-71	6- Summons ret'd & filed Ex. 11-2-71 Texas Legislative Redistricting Board by serving Crawford Martin through designated agent Alfred Walker, Austin Atkison, Dep. 4.00	
12-17-71	7- Summons ret'd & filed Ex. 11-2-71 Bob Bullock bu serving Julie Joslin, Designated agent, Austin, Atkison, Dep. 4.00	
12-17-71	8- Summons ret'd & filed Ex. 11-2-71 Preston Smith, by serving Ruth Goeppinger, Designated Agent, Austin, Atkison, Dep. 4.00	
12-17-71	9- Summons ret'd & filed Ex. 11-3-71 Robert S. Calvert, Austin, Atkison, Dep. 4.00	
12-17-71	10- Summons ret'd & filed Ex. 11-3-71 Ben Barnes, by serving Robert Spellings, designated agent, Austin, Atkison, Dep. 4.00	
12-17-71	11- Summons ret'd & filed Ex. 11-3-71 G. F. Mutscher, Austin, Atkison, Dep. 4.00	
12-17-71	12- Defts' Answer to complaint and complaint in intervention filed	
12-17-71	13- Demand for Jury Trial by Bob Bullock filed	
12-17-71	14- Order for Pre-Trial conference in Austin 12-22-71 filed Copies mailed to attys for both sides	
12-22-71	15- Minutes of Pre-Trial Conference, filed.	
"	16- Order Setting Time Limits under Rulls 30, 31, 33, 34 & 36 FRCivP, filed. Copies to Judges, Attys of Record & Master, sth. See Paper # 12, A-71-CA-142 for Original.	
"	17- Order Granting Motion for Intervention of George L. Allen et al in A-71-CA-143, filed. Copies to Judges, Attys of Record & Master. Original filed in A-71-CA-143.	
"	18- Order assessing Parties for Expenses Incident to Hearing by Special Master, filed. Copies to Judges, Attys of Record & Master, sth. See paper # 14, A-71-CA-142 for Original.	
"	19- Order Appointing Special Master, filed. Copies to Judges, Attys of Record & Master, filed. See paper #19, A-71-CA-142 for Original.	
"	20- Oath of Special Master, filed. Copies to Judges, Attys of Record & Master, sth. See paper # 16, A-71-CA-142 for original.	
"	21- Order by Special Master Calling for filing of Alternate Plan(s), filed. Copies to Judges, Attys of Record & Master, sth. Seepaper #17, A-71-CA-142 for original.	
"	22- Order by Special Master Setting Pre-Hearing Conference, filed. Copies to Judges, Attys of Record & Master, sth. See paper #18, A-71-CA-142 for original.	
12-27-71	23- Deft. Orr's Motion to Reconsider Appointment of Special Master, filed. Copies to Judges & Master, sth.	
"	24- Deft. Orr's Objections to the Appointment of Special Master, filed. Copies to Judges & Master, sth.	
"	25- Deft. Orr's Brief in Support of Motion to Reconsider & Objections, filed. Copies to Judges & Master, sth.	
"	26- State Defts' Motion in Opposition to Order Appointing Master, filed. Copies to Judges & Master, sth.	

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D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order Judgment
12-27-71	27. Supplemental Memorandum of Authorities in Support of Defts'(State) Motion in Opposition to Appointing Master, filed. Copies to Judges & Master, sth.	
12-28-71	28. State Defts' Request for Discovery, filed. Copies to Judges, sth.	
"	29. Order Setting asidé Order Appointing Master & Setting Schedule, filed. Copies to Judges, Master & Attys of Record, sth.	
"	30. Order Granting Motion to Intervene by Tom Crouch et al, filed. Copies to Judges & Attys of Record, sth.	
12-29-71	31. Omnibus Order, filed. Copies to Judges & Attys of Record, sth/	
"	32. Answer of Intervenors Kail et al to Request for Discovery & Production, filed. Copies to Judges,sth.	
12-31-71	33. Complaint in Intervention (Tom Crouch), filed. Copies to Judges, sth.	
"	34. Plaintiff's Response to Interrogatories, filed. Copies to Judges, sth.	
"	35. Plaintiff's Responses to Interrogatories by Regester, filed. Copies to Judges, sh.	
"	36. Plaintiff's Responses to Request for Admissions, filed. Copy to Judges, sth.	
"	37. Response to Request for Production under Rule 34, filed. Copy to Judges, sth.	
1-2-72	38- Pre-Trial Order filed	
1-3-72	39- Trial Brief Submitted on Behalf of Republican Intervenors filed	
1-3-72	40- Order allowing payment daily transcript to Reporter filed Copies given to Judges and mailed to attys for both sides	
1-3-72	41- Motion for Dismissal or for Judgment filed	
1-3-72	42- Pre-Trial Memorandum Brief filed	
1-4-72	43- Record of Proceedings Hearing on Pretrial Conference held 12-22-71 (see copy in A-71-CA-142)	
1-6-72	44- Oral Deposition of Mr. Richard Menchaca filed (see copy in A-71-CA-142)	
1-6-72	45- Order filed Copies mailed to all judges and all attys	
1-7-72	46- Motion for Leave to File Amicus Curiae Brief and Amicus Currie Brief of W.B. Kennedy, Kiborio Hinojosa, G.F. Smith and J. Diogenes Doe filed	
1-4-72	Trial began, opening statements	
1-5-72	Testimony resumed	
1-6-72	Testimony resumed, all Trial Briefs due, Proposed findings and submit plans by 1-14-72 Case taken under advisement	
1-12-72	47- Memorandum of the Amicic Curiae filed (see papers in A-71-CA-143)	
1-14-72	48 Post Trial Brief and Argument & Proposed single member district plan for Dallas Co. filed	
1-72	49- Defts' Brief (see papers in A-71-CA-142) filed	
1-14-72	50- Findings of Fact and Conclusions of Law Proposed by the Defts. filed (see papers in A-71-CA-142)	
1-14-72	51- Letter by Defts. Attorney Samuel D. McDaniel with Comments on Mauzy Plan and Errors noted in Mauzy Representative Districts Plan filed (see papers in A-71-CA-142).	
1-14-72	52- Post-Trial Brief Submitted on Behalf of Dallas Republican Intervenors filed	
1-14-72	53- Post-Trial Brief for Pltf-Intervenors Washington, et al, filed	
1-18-72	54- Order issue check $2,100.00 as partial payment daily transcript to Jack D. Sykes filed	
1-18-72	55- Map showing redistricting plan on a single member basis for Dallas Co. Texas filed (see papers in A-71-CA-142)	
1-19-72	56- Motion to Intervene as a Plaintiff filed	
1-72	57- Deposition pd by Pltf. Regester in the amount $361.47 (see papers in A-71-CA-142)	
1-28-72	57- Opinion & Order filed	
1-28-72	58- Oral Deposition of Mr. Hugh Park (originally filed 1-6-72) (see in A-71-CA-142)	
1-28-72	58- Oral Deposition of Mr. Richard Menchaca (originally filed 1-6-72)(see in A-71-CA-142)	

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DATE	PROCEEDINGS	Date Of Judgment
1-28-72	60- Deposition Bob Armstrong (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	61- Deposition Ben Barnes (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	62- Deposition Gus Mutcher (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	63- Oral Depoisition Gregory Drew Hooser (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	64- Record of Proceedings Vols 1,2,3,4 1-3-4-5-6-1972 (see in A-71-CA-142)	
1-28-72	65- Oral Deposition of Crawford C. Martin (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	66- Deposition Robert S. Calvert (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	67- Oral Deposition of Robert Spellings (originally filed 1-3-72)(see in A-71-CA-142)	
2-3-72	68- Pltfs' Motion to Amend Judgment filed(see papers A-71-CA-142)	
2-3-72	69- Affidavit filed (see papers A-71-CA-142)	
2-8-72	70- Order grnating Motion to amend Opinion and Order to rectify clerical errors filed Copies mailed to attys for both sides	
2-9-72	71- Motion to Allow Payment of Deposition Costs filed	
2-11-72	72- Notice of Appeal to the Supreme Court of theU.S. Pltf. Curtis Graves filed	
2-15-72	73- Motion to Allow Payment of Deposition Costs filed (see paper in A-71-CA-142)	
2-15-72	74- Order granting motion to allow payment of deposition costs filed (see paper in A-71-CA-142)	
2-18-72	75- Letter of request to certify complete record & transmit to U.S. Supreme Court along with A-71-CA-143,A-71-CA-144, A-71-CA-145 filed (See paper in A-71-CA-142)	
2-28-72	76- Notice of Appeal to the Supreme Court of the U.S. in Civil A-71-CA-144 filed	
3-7-72	77- Notice of Appeal to the Supreme Court of the U.S. Texas State Democratic Executive Committee, Roy Orr, Chairman, Preston Smith, Governor of Texas, Bob Bullock,Secty of State of Texas and the Texas Legislative Redistricting Board, composed of the following officials State of Texas: Ben Barnes, Lt. Governor, G.F. Mutscher, Speaker of the House, Bob Armstrong, Commissioner of the General Land Orrice, Robert S. Calvert, Comptroller Public Accounts & Crawford C. Martin, Atty. General filed	
9-72	78- Order Balance of funds deposited Registry Account of Austin Natl Bk. be transferred to the Registry Fund checking account with the Treasurer of U.S. filed Copies mailed to attys for both sides	
10-19-72	79- Order U.S. Supreme Court that probable jurisdiction has been considered for appeal filed (see paper in A-71-CA-143)	
1-22-73	80 - Motion of Special Master George Schatzki, filed.	

(x)

CIVIL DOCKET
UNITED STATES DISTRICT COURT

A 71 CA 145

Jury demand date: TR- SA-71 CA-339 (San Antonio)

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
VAN HENRY ARCHER, JR., ET AL.,	For plaintiff: Nathan W. Eason J. Douglas McGuire 400 Alamo Natl Bldg., San Antonio 78205
VS.	
PRESTON SMITH, Governor of the State of Texas BOB BULLOCK, Secretary of the State of the State of Texas, BEN BARNES, Lieutenant Governor of Texas, BOB ARMSTRONG, Commissioner of the General Land Office of Texas, ROBERT S. CALVERT, Comptroller of Public Accounts of Texas, G. F. (GUS) MUTSCHER, Speaker, House of Representatives of Texas, and CRAWFORD MARTIN, Attorney General of Texas	
TR- SA-71-CA-339 (San Antonio)	
JUDGES: Irving L. Goldberg 749 3514 Rm. 13-C-6 U1S. Courthouse 1100 Commerce St., Dallas 75202 William Wayne Justice 597 9387 P.O. Box 330, Tyler 75701 John H. Wood,Jr. 224 2753 P.O. Box 2616, San Antonio 78296	For defendant: Samuel D. McDaniel Staff Legal Asst. Box 12548, Capitol Station, Austin 78711
THREE-JUDGE	

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed 1-1-72	Clerk					
J.S. 6 mailed 2-1-72	Marshal					
Basis of Action: Constitutional rights, challenging apportionment plans for House of Representative	Docket fee					
	Witness fees					
Action arose at:	Depositions					

DATE Re-filed	PROCEEDINGS	Date Order Judgment
12-15-71	1- Order designating 3-Judge Court, Hon. Wayne Justice, Hon. John H. Wood, Jr., & Circuit Judge Irving Goldberg w/copy of Pre-trial order and transfer and consolidating for hearing & submission cases to Western District of Texas at Austin filed	
12-15-71	2- Pltfs' Original Complaint filed	
12-15-71	3- Summons ret'd & filed Ex. 11-29-71 Crawford C. Martin by serving Alfred Walker, Exec. Asst. Austin, Priddy, Dep. 3.00	
12-15-71	4- Summons ret'd & filed Ex. 11-29-71 G.F. (Gus) Mutscher, by serving Rush McGinty, Exec. Asst., Austin, Priddy, Dep. 3.00	
12-15-71	5- Summons ret'd & filed Ex. 11-29-71 Robert S. Calvert, Austin, Priddy, Dep. 3.00	
12-15-71	6- Summons ret'd & filed Ex. 11-29-71 Bob Armstrong, by serving Diana Dry, designated agent, Austin, Priddy, Dep. 3.00	
12-15-71	7- Summons ret'd & filed Ex. 11-29-71 Ben Barnes, by werving Ann Curlee, designated agent, Austin, Priddy, Dep. 3.00	
12-15-71	8- Summons ret'd & filed Ex. 11-29-71 Bob Bullock, by serving Julie Joslin, designated agent, Austin, Priddy, Dep. 3.00	
12-15-71	9- Summons ret'd & filed 11-29-71 Preston Smith, by serving Janelle Erickson, designated agent, Austin, Priddy, Dep. 3.00	
12-15-71	10- Order cancelling hearing on pretrial conference filed	
12-15-71	11- Order setting time for filing of brief by pltf & response filed	
12-15-71	12- Order setting pre-trial conference Austin, 12-22-71 9:00 A.M. Copies mailed to attys for both sides	
12-17-71	13- Defts' Original Answer filed Copies mailed to all Judges	
12-22-71	14- Minutes of Pre-Trial Conference, filed.	
"	15- Order Setting time Limits under Rules 30, 31, 33, 34 & 36 FRCivP, filed. copies to Judges, Attys of Record & Master, ath. See paper #12, A-71-CA-142 for Original.	
"	16- Order Granting Motion for Intervention of George L. Allen et al in A-71-CA-143, filed. Copies to Judges, Attys of Record & Master. Original order filed in A-71-CA-143.	
"	17- Order Assessing Parties for Expenses Incident to Hearing by Special Master, filed. Copies to Judges, Attys of Record & Master. See paper # 14, A-71-CA-143 for original.	
"	18- Order Appointing Special Master, filed. Copies to Judges, Attys of Record & Master, ath. See paper # 15, A-71-CA-142 for original.	
"	19- Oath of Special Master, filed. Copies to Judges, Attys of Record & Master, ath. See paper #16, A-71-CA-142 for original.	
"	20- Order by Special Master Calling for Filing of Alternate Plan(s), filed. Copies to Judges, Attys of Record & Master, ath. See paper # 17, A-71-CA-142 for Original.	
"	21- Order by Special Master Setting Pre-Hearing Conference, filed. Copies to Judges, Attys of Record & Master, ath. See paper #18, A-71-CA-142 for original.	
12-27-71	22- Deft. Orr's Motion to Reconsider Appointment of Special Master, filed. Copies to Judges, Master, ath.	
"	23- Deft. Orr's Objections to the Appointment of Special Master, filed. Copies to Judges, Master, ath.	
"	24- Deft. Orr;s Brief in Support of Motion to Reconsider & XXXXXXXXX Objections, filed. Copies to Judges, Master, ath.	
"	25- State Defts. Motion in Opposition to Order Appointing Master, filed. Copies to Judges & Master, ath.	
"	26- State Defts. Supplemental Memorandum of Authorities in Support of Motion in Opposition to Appointing Master, filed. Copies to Judges & Master, ath.	
12-28-71	27- State Defts Request for Discovery, filed. Copies to Judges & Master, ath.	

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D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
12-28-71	28. Order Setting Aside Order Appointing Master & Setting Schedule, filed. Copies to Judges, Master & Attys of Record, sth.
"	29. Order Allowing Motion of Tom Crouch et al to Intervene in A-71-CA-144, filed. Copies to Judges & Attys of Record, sth.
"	30. Omnibus Order, filed. Copies to Judges & Attys of Record, sth.
12-30-71	31. Answers of Archer, et al to Defts. Interrogatories, filed. Copies to Judges, sth.
"	32. Response of Archer et al to Rule 36 Admissions, filed. Copies to Judges, sth.
1-3-72	33- Order allowing payment for transcript daily recorded by reporter filed copies given
1-3-72	34- Trial Brief of Archer, et al, filed
1-3-72	35- Motion for Dismissal or for Judgment filed
1-3-72	36- Pre-Trial Memorandum Brief filed
1-4-72	37- Record of Proceedings Hearing on Pretrial Conference held 12-22-71 filed (see copy in A-71-CA-142)
1-4-72	38-Record of Proceedings Hearing on Pretrial Conference held 12-31-71 filed (see copy in A-71-CA-142)
1-4-72	39- Pretrial Order filed (see papers in A-71-CA-143)
1-6-72	40- Oral Deposition of Mr. Utah Kirk filed (see papers in A-71-CA-142)
1-6-72	41- Oral Deposition of Mr. Richard Menchaca filed (see papers in A-71-CA-142)
1-6-72	42- Order filed copies mailed to all judges and all attys
1-6-72	43- Stipulation filed
1-4-72	Trial opened openening statements , testimony began
1-5-72	T.ial resumed
1-6-72	Deft. Orr Rest State Deft. Rest. Rebuttal by Bernal Intervenors, Arguments, Post Trial Brief due 1-14-72, proposed findings and submit plans by 1-14-72
	Case taken under advisement
1-12-72	44- Memorandum of the Amici Curiae filed (with attachements) (see paper in A-71-CA-143)
1-14-72	45- Post Trial Brief and Argument & Proposed single member district plan for Dallas Co. filed (see papers in A-71-CA-144)
1-14-72	46- Post Trial Memorandum Brief, Findings and Conclusions of Pltfs. Van Henry Archer, Jr., et al, & proposed single-member district map and proposes Reapportionment Senatorial Dist. Map Districts 19,21 & 26 filed
1-14-72	47- Defts' Brief filed (see papers in A-71-CA-142)
1-14-72	48- Findings of Fact and Conclusions of Law Proposed by the Defts. filed (see papers in A-71-CA-142)
1-14-72	49- Letter by defts' Attorney Samuel D. McDaniel and Comments on Mauzy Plan and Errors Noted in Mauzy Representative Districts Plan filed (see papers in A-71-CA-142)
1-14-72	50- Post-Trial Brief for Pltf-Intervenors Washington, et al, filed (see papers in A-71-CA-144)
1-18-72	51- Orderissue check $2,100.00 as partial payment of said daily transcript to Jack D. Sykes filed
1-18-72	52- Map showing redistricting plan on a single-member basis for Dallas Co. Texas filed (see papers in A-71-CA-142)
1-25-72	53- Depositions pd by pltf. Regester in amount $361.47 (see papers in A-71-CA-142)
1-28-72	54- Opinion & Order filed
1-28-72	55- Deposition Bob Armstrong (originally filed 1-3-72)(see in A-71-CA-142)
1-28-72	56- Deposition Ben Barnes(originally 1-3-72)(see in A-71-CA-142)
1-28-72	57- Deposition Gus Muthcer (originally filed 1-3-72)(see in A-71-CA-142)
1-28-72	58- Oral Deposition Gregory Drew Hooser(originally filed 1-3-72)(see in A-71-CA-14

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DATE	PROCEEDINGS	Date Order Judgment N
1-28-72	59 - Record of Proceedings Vols 1,2,3,4 on Jan 3,4,5,6 filed (see in A-71-CA-142)	
1-82-72	60- Oral Deposition Crawford C. Martin (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	61- Deposition Robert S. Calvert (originally filed 1-3-72)(see in A-71-CA-142)	
1-28-72	62- Deposition Robert Spellings $249.25 to be pd by Pltf (originally filed 1-3-72)(see in A-71-CA-142)	
2-3-72	63- Pltfs' Motion to Amend Judgment filed (see papers A-71-CA-142)	
2-3-72	64- Affidavit filed (see papers A-71-CA-142)	
2-8-72	65- Order amending Opinion & Order to recitfy clerical errors filed Copies mailed to attys for both sides	
2-9-72	66- Motion to Allow Payment of Deposition costs filed	
2-11-72	67 - Notice of Appeal to the Supreme Court of U.S. filed by Curtis Graves Pltf.	
2-15-72	68- Motion to Allow Payment of Deposition Costs filed (see paper in A-71-CA-142)	
2-15-72	69- Order granting Motion to allow payment of desposition costs filed (see paper in A-71-CA-142)	
2-18-72	70 Letter of request to certify complete record and transmit U.S. Supreme Court along with A-71-CA-143,A-71-CA-144,A-71-CA-145) filed (see paper in A-71-CA-142)	
2-28-72	71- Notice of Appeal to the Supreme Court of the U.S. Filed	
3-27-72	72- Notice of Appeal to the Supreme Court of the U.S. Preston Smith,Governor of Texas, Bob Bullock,Secty of State of Texas, Roy Orr, Chairman, Texas State Democratic Executive Committee, & the Texas Legislative Redistricting Board, composed of the following officials of the State of Texas: Ben Barnes Lt. Governor, G.F. Mutscher, Speaker of the House, Bob Armstrong, Commissioner of the General Land Office, Robert S. Calvert, Comptroller of Public Accounts & Crawford C. Martin, Atty. General filed	
6-9-72	73- Order Balance of funds deposited Registry Account of Austin Natl Bk. be transferred to the Registry Fund checking account with the Treasurer of U.S. filed Copies mailed to attys for both sides	
10-19-72	74- Order U.S. Supreme Court that probable jurisdiction has been considered for appeal filed (see paper in A-71-CA-143)	
11-14-72	75- Order U.S. Supreme Court Judgment of the said U.S. District Court AFFIRMED	
1-22-73	76 - Motion of "Special Master" Schatzki, filed.	

In The

United States District Court

For The Eastern District of Texas

Tyler Division

Civil Action No. 5386

Diana Regester, Robert G. Mims,
B. C. Clayton, and Stephen E. McConnico

Plaintiffs,

v.

Bob Bullock,
Secretary of State of the State of Texas, et al

Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Diana Regester, Robert G. Mims, Joe David Clayton, Stephen E. McConnico and other individuals named as Plaintiffs above, on behalf of themselves and others similarly situated comprising the class hereinafter defined, and complaining of the Honorable Bob Bullock in his capacity as Secretary of State of the State of Texas, Roy Orr in his capacity as Chairman of the State Democratic Executive Committee, Dr. George Willeford in his capacity as Chairman of the State Republican Executive Committee, J. Burns Brown in his capacity as Chairman of the Smith County Democratic Executive Committee, and Gene Diedrick in his capacity as Chairman of the Republican Executive Committee of Smith County, Texas, hereinafter called

Defendants, and for cause of action would respectfully show:

I.

PARTIES — CLASS ACTION

Plaintiffs:

Plaintiff	Residence	Texas House of Representatives District Per Redistricting Board
Diana Regester	Nacogdoches County	4
Robert G. Mims	Bascom Road, Whitehouse, Smith County, Texas	14
Joe David Clayton	Old Kilgore, Highway Tyler, Smith County, Texas	2
Stephen E. McConnico	Box 78, New London, Rusk County, Texas	3

All Plaintiffs are qualified and duly registered to vote in elections for the Texas State House of Representatives in their respective districts.

CLASS ACTION:

Plaintiffs sue on behalf of themselves and all other qualified voters, registered and unregistered, within the several districts wherein the respective Plaintiffs reside as well as all other qualified voters in all other Texas State House of Representatives districts.

That the number of persons comprising the class so defined is so numerous as to make it impossible to bring them before the Court. That Plaintiffs, as qualified and registered voters, are fairly representative of the class as defined.

That by virtue of the foregoing, this action is properly brought by these plaintiffs as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

DEFENDANTS

The Defendant Bob Bullock is the duly qualified and acting Secretary of State of the State of Texas. That by the provisions of Article 1.03 of the Texas Election Code (Acts, 60th Leg., Ch. 723, p. 1860, § 3, 1967) he is, by virtue of his office, the chief election officer of the State of Texas and is charged with the duty, *inter alia,* of ". . . . obtain(ing) and Maintain(ing) uniformity in the application, operation and interpretation of the election laws." Said Defendant may be served at his offices in the State Capitol Building in Austin, Texas.

The Defendant Roy Orr is the duly qualified and acting Chairman of the Texas State Democratic Executive Committee, and may be served with process at 320 Woodhaven, DeSoto, Dallas County, Texas.

The Defendant Dr. George Willeford is the duly qualified and acting Chairman of the Texas State Republican Executive Committee, and may be served with process at 310 Littlefield Building, Austin, Travis County, Texas.

The Defendant J. Burns Brown is the duly qualified and acting Chairman of the Smith County Democratic Executive Committee, and may be served with process at P. O. Box 908, Tyler, Smith County, Texas.

The Defendant Gene Diedrick is the duly qualified and acting Chairman of the Republican Executive Committee of Smith County, Texas, and may be served with process at 600 Barclay, Tyler, Smith County, Texas.

That pursuant to the provisions of 28 U.S.C. § 2284, Notice of Hearings in this suit must be given to the Honorable Preston Smith, Governor of the State of Texas at his office or offical residence in Austin, Texas, and to the Honorable Crawford Martin, Attorney General of the State of Texas at his office in Austin, Texas.

II.

JURISDICTION

This is a class action filed pursuant to 42 U.S.C. § 1983 to redress violations of rights secured to plaintiffs by the Fourteenth and Fifteenth Amendments to the United States Constitution as well as Article III, Section 26 of the Constitution of the State of Texas (Acts, Texas Legislative Redistricting Board, October 22, 1971,) reapportioning the Texas House of Representatives pursuant to Article III, Section 28 of the Constitution of the State of Texas in compliance with a writ of mandamus issued by the Supreme Court of Texas in the case of *Mauzy* vs. *The Legislative Redictricting Board,* et al, B-2955, Decision of the Justices, September 27, 1971, as now unofficially reported in the Texas Supreme Court Journal Volume 15, page 37 (henceafter referred to as *Acts of Redistricting Board, Oct. 22, 1971,*) are constitutionally deficient and injunctive relief prohibiting implementation of the Acts and requiring that elections for the legislature be conducted under a constitutionally sufficient non-discriminatory reapportionment plan. This Court has jurisdiction pursuant to 28 U.S.C. § 1343 (3).

III.

STATEMENT OF PLAINTIFFS' POSITION

By this Complaint, Plaintiffs seek to continue the efforts (first begun in the case of *Kilgarlin, et al* vs. *Martin, et al* in July, 1963) to secure legislative reapportionment in the State of Texas which is not discriminatory but which affords equal status and voting weight between all Texas voters consistent with the standards of the Fourteenth Amendment of the United States Constitution. In January of 1965 Plaintiffs in *Kilgarlin* successfully secured a summary judgment from the Court declaring the acts apportioning both

houses of the Texas Legislature discriminatory and violative of the Federal Constitution, but that Court withheld affirmative relief in an effort to provide the State Legislature an opportunity to enact a Constitutional apportionment scheme.

Subsequent thereto, the Texas Legislature did enact new reapportionments responsive to the Court's judgment and with knowledge of the constitutional standards made applicable to reapportionment as then recently expressed by the United States Supreme Court in *Reynolds* vs. *Sims,* 377 U.S. 533, and following decisions relating to companion cases. However, the act passed by the 59th Legislature reapportioning the Texas House of Representatives (House Bill 195) contained notoriously discriminatory provisions between its various districts and remained violative of Constitutional guarantees. In response, Plaintiffs in *Kilgarlin* renewed their challenge to the apportionment effected by House Bill No. 195, commencing proceedings again before that Court in the late summer of 1965.

After evidentiary hearing in the fall of 1965 and the submission of extensive briefs by all parties, that Court (by its Opnion dated February 2, 1966) sustained Plaintiffs' Complaint that the so called "flotorial" districts created by House Bill 195 were invidiously discrminatory, but rejected other complaints of the Plaintiffs, particularly including their position that the over-all range of deviation between the population of the various districts represented an unjustifiable and discriminatory treatment of Texas voters, holding that such deviations were, in effect, *de minimus* and that the burden rested upon Plaintiffs to disprove the availability of any rational, constitutionally permissible State policy which might justify such departures from population equality between districts. *Kilgarlin* v. *Martin,* 252 F.Supp. 404.

From such judgment, Plaintiffs prosecuted appeal to the United States Supreme Court, which thereafter, by Opinion dated February 20, 1967, reversed the judgment of that Court, holding that the population deviations in question were not *de minimus* and remanded the case for further hearing in which Defendants must assume the burden of proving that such discriminatory treatment was necessary and justifiable under a permissible State policy, *Kilgarlin* vs. *Hill,* 386 U.S. 120.

Thereafter, the 60th Texas Legislature, in apparent response to the Supreme Court's Opinion, effected the reapportionment of the House of Representatives by the passage of House Bill 911. While curing the discriminations previously imposed upon the voters of Dallas County and eliminating the vice of the flotorial districts, the Act perpetuated the identical legislative representation of Bexar County although the United States Supreme Court had specifically observed that such representation discriminated against the voters of Bexar County. In addition, despite the admonitions of the Supreme Court that the range of population deviations between the districts was discriminatory, absent justification, House Bill 911 effected a range of deviation between the populations of all the various districts which was for all practical purposes as great and discriminatory as those contained in the preceding Act.

Plaintiffs in *Kilgarlin* felt that House Bill 911 was passed in great haste and that the Constitutional vices and discriminations contained therein were well known to the Legislature. In view of this fact, and considering Plaintiffs in *Kilgarlin* own commitment to legislative processes, Plaintiffs in *Kilgarlin* relied upon an anticipation that the next session of the Legislature, to convene in January of 1969, would surely take steps to effect a constitutional reap-

portionment and eliminate the vices and discriminations contained in House Bill 911.

However, to their regret, the 61st Legislature undertook no measures whatsoever to devise and plan a Constitutional reapportionment of the House of Representatives. They then sought to prevail upon that Court to grant a hearing on the Legislative Redistricting Act of 1967, House Bill 911, continually from 1969 until that Court dismissed the Kilgarlin case, without notice or hearing, in June, 1971.

Meanwhile, the 62nd Session of the Texas Legislature convened in January, 1971, under strict constitutional mandate to redistrict both the Texas House of Representatives and the Texas Senate, or to have the job done for it by the Legislative Redistricting Board, created by Article III, Section 28 of the Constitution of the State of Texas. Such efforts were to prove disastrous, as shown by the fact that no reapportionment plan for the Texas Senate was ever voted upon, thus requiring the Legislative Redistricting Board to become operative.

Reapportionment of the Texas House of Representatives proved to be equally as disastrous. The bill finally passed by the 62nd Legislature, H.B. 783, was declared unconstitutional by the unaminous opinion of the Supreme Court of Texas, *from the bench,* after only thirteen minutes deliberation. *Smith, et al* vs. *Craddick, et al* ..... S.W.2d ..... (September 16, 1971).

Even then the Legislative Redistricting Board sought to evade its constitutional duty by voting four to one that it had no power to redistrict the Texas House of Representatives. The Supreme Court of Texas, again unaminously, issued a writ of mandamus ordering the Legislative Redistricting Board to redistrict the House. *Mauzy* vs. *Legislative Redistricting Board* ..... S.W.2d ..... (September 27, 1971).

The Legislative Redistricting Board, after having been forced to redistrict the House, enacted a plan on October 22, 1971, which is attached hereto and marked Exhibit "A" and incorporated herein for all purposes as if set out *in haec verba*. It is this plan which these plaintiffs attack in this lawsuit as being another unconstitutional chapter in the story of Texas Legislative Redistricting.

IV.

CAUSE OF ACTION

The Act of the Legislative Redistricting Board, October 22, 1971, proportioning the Texas House of Representatives should be declared unconstitutional, illegal, null and void for the following, among other reasons;

1. The Act of the Legislative Redistricting Board contains population deviations by districts which are not justified on any rational basis and which do not occur as a result of a rational state policy, i.e., State Representative District #3 is overpopulated by 5.8% and Legislative District #4 is underpopulated by 3.6%, a total population deviation of 9.4%;

2. The Act of the Legislative Redistricting Board, October 22, 1971, constitutes an effort to apportion the Texas House of Representatives by the use of varied mutually inconsistent approaches; population in some instances, geography in others, and, again pure politics in others appear to be the basis for the reapportionment;

3. Several, and perhaps most, of the districts were created for the benefit of incumbent members of the Texas House of Representatives;

4. There was no good faith effort on the part of the Legislative Redistricting Board to reapportion with as little population deviation as possible between districts; further, in the case of necessary deviation, little

effort was made to permit district population deviation based upon a real necessity to maintain the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts and the recognition of natural or historical boundary lines and district orientations;

5. The Act of the Legislative Redistricting Board on October 22, 1971, lacks uniformity, consistency and rationalization and in many instances operates to minimize or cancel out the voting strength of racial or political elements in the various election districts and more particularly creates single member districts for some counties, for a large county such as Harris County, but provides multiple member districts so as to cancel out the voting strength of racial or political elements in Dallas County, Tarrant County, Bexar County, Jefferson County, Galveston County, McLennan County, Travis County, Nueces County, Hidalgo County, El Paso County and Lubbock County.

V.

RELIEF

WHEREFORE, Plaintiffs pray (1) that defendants be cited to appear and answer herein; (2) that the Court enter an order pursuant to Rule 23 F.R.C.P. adjudging this suit to be a class action on behalf of all qualified voters in the State of Texas; (3) that in accordance with the Fourteenth and Fifteenth Amendments of the United States Constitution that a declaratory judgment declaring such acts of the Legislative Redistricting Board of October 22, 1971, unconstitutional and void; (4) that the Court appoint a master under Rule 53 of F.R.C.P. to hold bearings and arrive at a plan that is constitutionally sufficient for the apportionment of the Texas House of Representatives; (5) that said master report back to the Court and that the Court hold an evidentiary hearing to determine the constitutionality

of such master's plan; (6) that this Honorable Court adopt a constitutionally sufficient plan for the Texas House of Representatives and make Findings of Fact and Conclusions of Law; (7) the Plaintiffs pray that all costs be adjudged against the Defendants; and the Court retain jurisdiction and render such further orders as may seem appropriate and for other relief at law and in equity as the Plaintiffs might be entitled.

Respectfully submitted,

By TONY KORIOTH
Tony Korioth
315 Westgate Building
122 Colorado
Austin, Texas 78701

MULLINAX, WELLS, MAUZY & BAAB, INC.
1601 National Bankers Life Bldg.
Dallas, Texas 75201

By OSCAR H. MAUZY
Oscar H. Mauzy

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CIVIL ACTION NO. 5386

DIANA REGESTER, ROBERT G. MIMS,
B. C. CLAYTON, and STEPHEN E. MCCONNICO,

Plaintiffs,

v.

BOB BULLOCK,
SECRETARY OF STATE OF THE STATE OF TEXAS, ET AL

Defendants.

DEFENDANTS' ORIGINAL ANSWER TO COMPLAINT AND COMPLAINT IN INTERVENTION

Defendant, BOB BULLOCK, Secretary of State of the State of Texas, answers the complaint in the above captioned lawsuit as follows:

I.

Defendant BOB BULLOCK requests a three judge district court under the provisions of 28 U.S.C. 2281 and 2284 and would show the Court that while Plaintiffs attempt to avoid the operation of the above statutes by couching their pleadings in terms of a declaratory judgment action, the inevitable result of the judgment of this Court, should it be against Defendants, would be an injunction under 28 U.S.C. 2283 to effectuate this Court's judgment; and that, therefore, this is a matter which requires a three judge Court.

II.

Defendant, BOB BULLOCK, can neither admit nor deny the allegations of Paragraph I because of insufficient information; however, Defendant BOB BULLOCK has no objection to the suit being prosecuted as a class action provided it is a proper suit for class action, the class is defined, and all members of the class will be bound by the judgment. Defendant BOB BULLOCK admits that he is the chief election officer of the State of Texas.

III.

In reply to Paragraph III of the complaint Defendant denies that there is a violation of rights securred to the Plaintiffs by the Constitution of the United States and the State of Texas and denies that any civil rights securred by 42 U.S.C. 1983 have been violated and denies that this Court has jurisdiction under 28 U.S.C. 1443(3).

IV.

The statement of Plaintiffs position contained in Paragraph III of the complaint is argument and not a pleading of a cause of action and is neither admitted nor denied because, while Defendant does not agree with some of the allegations therein made, such allegations lack relevancy to the framing of the issues presented by this suit. Defendant does deny the allegation in that Paragraph that the present Redistricting Plan for the Texas House is unconstitutional.

V.

In reply to Paragraph IV of the complaint, the Defendant denies that the apportionment of the Texas House of Representatives is unconstitutional, illegal, null or void, and in particular denies the Sub-paragraphs of Paragraph IV of the complaint, as follows:

Sub-paragraph 1 is denied except insofar as it alleges that State Representative District No. 3 is overpopulated by 5.8% and District No. 4 is underpopulated by 3.6%, which is admitted.

Sub-paragraphs 2, 3, 4 and 5 are denied.

VI.

Defendant prays the Court that Plaintiffs be denied any relief under Sub-divisions 3 through 7 of their prayer for relief.

VII.

ANSWER TO INTERVENTION

Defendant BOB BULLOCK has no objection to the intervention of ELBERT TURNER, GENE FREELAND, J. W. SIFFORD and HENRY MUNOZ. Defendant BOB BULLOCK does object to the intervention of the Texas AFL-CIO on the basis that the union has no standing, in that the union is not a person and is not a voter.

VIII.

Defendant BOB BULLOCK denies Paragraph 1 of the complaint in intervention insofar as it asserts that the union "is entitled to sue on behalf of its members to assert that the redistricting scheme of the Texas House of Representatives operates to, and was designed to operate to cancel and/or dilute the voting strength of identifiable political and economic elements within the aforesaid counties," and neither admits nor denies the remainder of the allegations of that Paragraph because of insufficient information.

IX.

In reply to Paragraph 2 of the complaint in intervention Defendant adopts the allegations of Paragraph II above.

X.

In reply to Paragraph 3, Defendant adopts the allegations of Paragraph III above.

XI.

In reply to Paragraphs 4, 5 and 6 Defendant denies the allegations.

XII.

Defendant respectfully prays that the Court deny any relief to intervenors.

XIII.

Defendant does affirmatively allege that no constitutional or statutory right of the Plaintiff or intervenors have been abridged by the apportionment of the Texas House of Representatives executed by the Texas Redistricting Board.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

.....

SAMUEL D. McDANIEL
Staff Legal Assistant
Box 12548, Capitol Station
Austin, Texas 78711

.....

PAT BAILEY
Assistant Attorney General
Box 12548, Capitol Station
Austin, Texas 78711

DEMAND FOR JURY TRIAL

Defendant BOB BULLOCK, as provided by Rule 38 of the Federal Rules of Civil Procedure hereby demands trial by jury on all issues of fact presented by the above captioned cause.

.....

SAMUEL D. MCDANIEL

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing answer and demand for jury trial has been served upon the counsel for complaintants and complaintants in intervention by United States mail this 24th day of November, 1971, addressed to Tony Korioth, 315 Westgate Building, 1122 Colorado, Austin, Texas and Oscar H. Mauzy, 1601 National Bankers Life Bldg., Dallas, Texas and David R. Richards, 600 West 7th, Austin, Texas.

.....

SAMUEL D. MCDANIEL

IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

No. A-71-CA-142

DIANA REGESTER, ET AL,
Plaintiff,

VS.

BOB BULLOCK,
SECRETARY OF STATE OF THE STATE OF TEXAS, ET AL
Defendants.

ANSWER OF DEFENDANTS, DR. GEORGE WILLEFORD, CHAIRMAN OF THE TEXAS STATE REPUBLICAN EXECUTIVE COMMITTEE, GENE DIEDRICK, CHAIRMAN OF THE REPUBLICAN COMMITTEE OF SMITH COUNTY, TEXAS, AND MOTION TO BE JOINED AS PARTIES PLAINTIFF

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW DEFENDANTS, Dr. George Willeford, in his capacity as Chairman of the Texas State Republican Executive Committee, and Gene Diedrick, in his capacity as Chairman of the Republican Executive Committee of Smith County, Texas.

I.

Defendants, Dr. George Willeford, in his capacity as Chairman of the Texas State Republican Executive Committee and Gene Diedrick, in his capacity as Chairman of

the Republican Executive Committee of Smith County, Texas, admit the allegations set forth in each and every paragraph of the complaint.

II.

Defendants, Dr. George Willeford, in his capacity as Chairman of the Texas State Republican Executive Committee, and Gene Diedrick, in his capacity as Chairman of the Republican Executive Committee of Smith County, Texas, will be required to administer elections for Representatives to the Texas House of Representatives and they believe that the Acts of October 22, 1971 of the Texas Legislative Redistricting Board do in fact violate the Fourteenth Amendment of the Constitution of the United States.

III.

Defendants, Dr. George Willeford, in his capacity as Chairman of the Texas State Republican Executive Committee, and Gene Diedrick, in his capacity as Chairman of the Republican Executive Committee of Smith County, Texas, cannot carry out their responsibilities to conduct elections for Representatives to the Texas House of Representatives under an unconstitutional apportionment plan.

WHEREFORE, Defendants, Dr. George Willeford and Gene Diedrick pray that they be realined as Parties Plaintiff pursuant to Rule 20, Federal Rules of Civil Procedure, in this cause and that this Court declare the Acts of October 22, 1971 of the Texas Legislature Redistricting Board unconstitutional and void; that this Court adopt a constitutionally sufficient plan for the Texas House of Representatives; and that this Court retain jurisdiction of this action and render

such further orders as may be appropriate and for other relief at law and in equity or to which they may be entitled.

Respectfully submitted,

GRAVES, DOUGHERTY, GEE,
HEARON, MOODY & GARWOOD

By R. JAMES GEORGE, JR.
R. James George, Jr.

Attorneys For Defendants,
DR. GEORGE WILLEFORD AND
GENE DIEDRICK

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CIVIL ACTION No. 5386

DIANA REGESTER, ROBERT G. MIMS,
B. C. CLAYTON, AND STEPHEN E. MCCONNICO

v.

BOB BULLOCK,
SECRETARY OF STATE OF THE STATE OF TEXAS, ET AL

COMPLAINT IN INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

In accordance with Rule 23, 23.2 and 24 of the Federal Rules of Civil Procedure, the Texas AFL-CIO, an unincorporated association, and Elmer Turner, Gene Freeland, J. W. Sifford and Henry Munoz [hereinafter called Plaintiff-Intervenors] hereby intervene to allege that the plan for apportioning the Texas House of Representatives violates Plaintiff-Intervenors' right under the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States, and under federal statutes including the Voting Rights Act of 1965, 42 U.S.C. Section 1973.

1.

Plaintiff-Intervenor Texas AFL-CIO is an unincorporated association composed of working men and women in the State of Texas, many of whom are residents of the Texas counties of Dallas, Bexar and Tarrant and is entitled to sue on behalf of its members to assert that the redistricting scheme of the Texas House of Representatives operates

to, and was designed to operate to cancel and/or dilute the voting strength of identifiable political and economic elements within the aforesaid counties. Similarly, Plaintiff-Intervenors Turner, Freeland, Sifford and Munoz are all citizens of the United States, residents and qualified electors of the State of Texas and are entitled to sue on their own behalf to challenge the constitutionality of the aforesaid redistricting act.

2.

Plaintiff-Intervenors adopt the allegations of paragraph I of Plaintiffs' Original Complaint with respect to the designation of parties.

3.

Plaintiff-Intervenors adopt the allegations of paragraph II of the Original Complaint as amended as regards the jurisdictional allegation.

4.

Plaintiff-Intervenors assert on their own behalf and on behalf of those they represent that the action of the Legislative Redistricting Board in reapportioning the Texas House of Representatives deprives them of rights and privileges guaranteed by the Constitution and laws of the United States and they seek a declaration of their rights under the aforesaid constitutional and statutory provisions in accordance with the provisions of 28 U.S.C. Section 2201.

5.

In this connection, as more specifically alleged below, Plaintiff-Intervenors allege that the reapportionment of the Texas House of Representatives was designed to, and

operates to, cancel out and/or dilute the voting strength of identifiable political and economic elements within the urban counties of the State of Texas.

6.

Plaintiff-Intervenors adopt the allegations of paragraph IV of Plaintiffs' Original Complaint. In addition thereto Plaintiff-Intervenors assert that the action of the Legislative Redistricting Board in reapportioning the Texas House of Representatives was conceived with an object of cancelling out or diluting the voting strength of identifiable political and economic elements of the urban counties of the State of Texas and that by its operation said reapportionment scheme will have as its principal effect cancelling out and/or diluting the voting strength of the economic and political elements represented by your Plaintiff-Intervenors.

WHEREFORE, premises considered, your Plaintiff-Intervenors respectfully pray that the Court enter an order pursuant to the provisions of 28 U.S.C. Section 2201 declaring that the act of the Legislative Redistricting Board on October 22, 1971 reapportioning the Texas House of Representatives is in violation of the Constitution and laws of the United States and is void and for such other further relief at law or in equity as Plaintiff-Intervenors might be entitled.

Respectfully submitted,

CLINTON & RICHARDS
600 West 7th
Austin, Texas 78701

.....
David R. Richards

PROOF OF SERVICE

This is to certify that a true copy of the foregoing Complaint in Intervention has been served upon counsel as noted below by placing in the United States mail, postage prepaid, this 22nd day of November, 1971:

TONY KORIOTH, ESQ.
315 Westgate Building
Austin, Texas 78701

OSCAR H. MAUZY, ESQ.
Mullinax, Well, Mauzy & Babb, Inc.
1601 National Bankers Life Bldg.
Dallas, Texas 75201

HONORABLE CRAWFORD MARTIN
Attorney General of the State of Texas
Capitol Station
Austin, Texas 78711

Attn: Alfred Walker, Esq.

.....
David R. Richards

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DIANA REGESTER, ROBERT G. MIMS,
B. C. CLAYTON, and STEPHEN E. MCCONNICO,
Plaintiffs,

v.

BOB BULLOCK,
SECRETARY OF STATE OF THE STATE OF TEXAS, ET AL
Defendants.

COMPLAINT IN INTERVENTION

JURISDICTION

1. This is an action pursuant to 42 U.S.C. § 1983 to redress denial under color of the laws of the State of Texas of certain rights, privileges and immunities secured to Plaintiff-Intervenors by the Fourteenth and Fifteenth Amendments to the Constitution of the United States. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1343 (3) and (4). This is also an action pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57, F. R. Civ. P., for a declaratory judgment that the Act of the Legislative Redistricting Board of Texas enacted on the 22nd day of October, 1971 apportioning the State of Texas into Representative Districts is unconstitutional both upon its face and as applied to Plaintiff-Intervenors. Said Act, hereinafter referred to as "the Act," is attached hereto as Exhibit A and is made a part hereof by reference for all purposes. If the same be necessary, Plaintiff-Intervenors adopt the allegations of Paragraph II of the Original Complaint as amended as regards the jurisdictional allegation.

PRELIMINARY STATEMENT

2. This action involves the right of Plaintiff-Intervenors, individually and as members of the class or classes which they represent, to an equally effective vote and impact on the elective process for members of the Texas House of Representatives and to fair and equitable representation in said House. Plaintiff-Intervenors are being deprived of such right by a state statutory scheme (1) that provides for at-large, multi-member legislative districts in all major counties of the State of Texas except Harris County; (2) that, except for Harris County where single-member legislative districts are provided, no provision is made in said scheme for residential requirements of Representatves in all the other at-large, multi-member districts so as to distribute legislative representation equally throughout the respective areas of said districts; (3) that said scheme, including the Act in question and other electoral statutes of the State of Texas, makes no provision relating to political party primary elections for the nomination of party candidates for the Texas House of Representatives on a plurality vote basis but requires a majority vote in all cases and the same applies to special elections called to fill vacancies in Representative districts; (4) that in significant at-large, multi-member districts operates to minimize or cancel out the voting strength of Plaintiff-Intervenors and of the class or classes they represent, Plaintiff-Intervenors and their class or classes constituting an identifiable ethnic and political element of the voting population in the State of Texas generally and more particularly in the areas where some of Plaintiff-Intervenors reside, and (5) that as to certain legislative districts constitutes a sophisticated gerrymander so as to minimize the representation in the Texas House of Representatives of the class or classes to which Plaintiff-Intervenors belong.

PLAINTIFF-INTERVENORS

3. Plaintiff-Intervenors Joe J. Bernal, Leo Alvarado, John A. Longoria, Joe Garza, Albert A. Pena, III, Rene Gonzalez, Dario Chapa, and George Garza are Mexican-American citizens of the United States and residents and registered voters in the State of Texas and in the City of San Antonio, Bexar County, Texas.

4. Plaintiff-Intervenors Rene Gonzalez, Dario Chapa, George Garza and John A. Longoria in addition are residents of a ghetto or "barrio" area of San Antonio, Bexar County, Texas, the word "barrio" being used herein interchangeably and with the same legal meaning and effect as the word "ghetto."

5. Plaintiff-Intervenors Rubin Garza and Amador Garcia reside respectively in Robstown and Corpus Christi, Texas, both cities being located in Nueces County, Texas. Said Plaintiff-Intervenors are Mexican-American citizens of the United States and residents and registered voters in the State of Texas and in Robstown and Corpus Christi, Nueces County, Texas.

6. Plaintiff-Intervenors Leonelo Gonzales and Rodolfo Pena are residents of McAllen, Texas and Plaintiff-Intervenor Cruz Alaniz is a resident of Alamo, Texas. McAllen and Alamo, Texas are both located in Hidalgo County, Texas. Said Plaintiff-Intervenors are Mexican-American citizens of the United States and residents and registered voters in the State of Texas and in McAllen and Alamo, Hidalgo County, Texas.

7. Plaintiff-Intervenors Louis Estrada, Rene Martinez and Servando Martinez, Sr. are Mexican-American citizens of the United States and residents and registered voters

in the State of Texas and in the City of Dallas, Dallas County, Texas.

8. Plaintiff-Intervenors Louis Estrada and Servando Martinez, Sr. in addition are respectively residents of barrio areas of said City of Dallas known as West Dallas and Little Mexico.

9. All of the Plaintiff-Intervenors bring this action individually as residents and registered voters in the State of Texas and in the respective areas wherein they reside.

CLASS ACTIONS

10. All of the Plaintiff-Intervenors, in addition and without waiving their right to sue herein individually, bring this action as representatives of the Mexican-American population of the State of Texas under the provisions of Rule 23(a), F. R. Civ. P. In this connection Plaintiff-Intervenors say that the Mexican-American population of the State of Texas constitutes a major ethnically and culturally identifiable group or class within the general or total as well as the voting population of the State of Texas and that said class suffers from common, adverse and distinct problems in the fields of education, employment, health, politics, economics and others and as a result of which said class is the subject of invidious and discriminatory treatment for the correction of which said class requires fair and equitable representation in the Legislature of the State of Texas. Said class is concentrated geographically in the area comprising the Representative districts under the Act in question listed in said Act as numbers 31, 38, 39, 40, 41, 45, 46, 47, 48, 49, 50, 51, 56, 57, 58, 59, 69, 70, 71 and 72. Additional smaller but still sizeable "pockets" of this class are to be found in barrios in cities such as Houston, Austin, Fort Worth, Lubbock and others as well as in the West

Dallas and Little Mexico areas of the City of Dallas, Dallas County, Texas. Wherever located, whether inside or outside the area comprising the twenty Representative districts listed above, said class suffers from common, adverse and distinct problems in the fields hereinabove recited. For convenience in pleading said class hereafter will be referred to as Class A.

11. Said Class A is so numerous that joinder of all members of the class is impracticable; there are questions of law or fact common to the class; the claims of the Plaintiff-Intervenors are typical of the claims of the class; and said parties will fairly and adequately protect the interests of the class and of all others similarly situated.

12. Plaintiff-Intervenor Rubin Garza, in addition and without waiving his right to sue individually or as representative of Class A, sues herein as representative of the Mexican-American population of Robstown, Texas, said population comprising, upon information and belief, approximately eighty per cent of the total population of Robstown most of which resides in Mexican-American barrios in said city. To all intents and purposes except for the fact that it is restricted to a smaller geographical area, this Mexican-American population group has characteristics identical to those of Class A and is hereinafter referred to as Class B. Said Class B nevertheless is so numerous that joinder of all members of the class is impracticable; there are questions of law or fact common to the class; the claims of Plaintiff-Intervenor Rubin Garza are typical of the claims of the class; and said party will fairly and adequately protect the interests of the class and of all others similarly situated.

13. Plaintiff-Intervenors Rene Gonzalez, Dario Chapa, George Garza and John A. Longoria, in addition and with-

out waiving their right to sue individually or as representatives of Class A, sue herein as representatives of the Mexican-American population of the areas known generally as West and South San Antonio and located in the City of San Antonio, Bexar County, Texas. Said parties reside in said areas which also constitute Mexican-American barrios in said city. Said area, on information and belief, have a Mexican-American population ranging, block by block, from 60 to 70 per cent to almost 100 per cent of the total population of the area. Except as to the geographical area in question this Mexican-American population group has characteristics identical to those of Classes A and B and is hereinafter referred to as Class C. Said Class C, as the others, is so numerous that joinder of all members of the class is impracticable; there are questions of law or fact common to the class; the claims of Plaintiff-Intervenors Rene Gonzalez, Dario Chapa, George Garza and John A. Longoria are typical of the claims of the class; and said parties will fairly and adequately protect the interests of the class and of all others similarly situated.

14. Plaintiff-Intervenors Louis Estrada and Servando Martinez, Jr., in addition and without waiving their right to sue individually or as representatives of Class A, sue herein respectively as representatives of the Mexican-American population in the areas known generally as West Dallas and as Little Mexico and located in the City of Dallas, Dallas County, Texas. Plaintiff-Intervenor Louis Estrada resides in West Dallas while Plaintiff-Intervenor Servando Martinez, Sr. resides in Little Mexico. Both of said areas constitute Mexican-American barrios with West Dallas, on information and belief, having more than fifty per cent Mexican-American population and the remainder of its population being mostly Negro, and Little Mexico on information and belief, having a Mexican-American popula-

tion of at least eighty per cent. Except for the different geographical areas involved, the Mexican-American population in West Dallas and Little Mexico has characteristics identical to those of Classes A, B, and C and is hereinafter referred to as Class D. Said Class D, as the others, is so numerous that joinder of all members of the class is impracticable; there are questions of law or fact common to the class; the claims of Plaintiff-Intervenors Louis Estrada and Servando Martinez, Sr. are typical of the claims of the class; and said parties will fairly and adequately protect the interests of the class.

DEFENDANTS

15. Plaintiff-Intervenors adopt the allegations of Paragraph I of the Original Complaint with respect to the designation of parties defendant.

FACTS

16. As shown by Exhibit A, the Legislative Redistricting Board of Texas on the 22nd day of October, 1971, pursuant to the provisions of Article III, Section 28, of the Texas Constitution enacted the Act in question herein by which said Board apportioned the State of Texas into Representative Districts for the purpose of electing members of the Texas House of Representatives. Said Act is now the law in the State of Texas and will govern the election of all members of the Texas House of Representatives for the voting year of 1972 and thereafter until the State is again reapportioned as provided by law.

17. As shown by Exhibit A, said Act apportioned the State of Texas into eleven multi-member districts which will elect a total of sixty Representatives and ninety single-

member districts which will elect one Representative apiece for a total membership of 150 in said House of Representatives.

18. Of the ninety single-member districts, a total of 23 are located within Harris County, Texas, said county being the only major county in the State which was subdivided into single-member districts. These 23 districts are numbers 78 through 100 in Exhibit A. All the other major counties and metropolitan areas in the State were placed in multi-member districts. A list of said counties and areas together with the number of each district and the number of Representatives in each district is as follows:

County (Metropolitan Area)	Representative District	Number of Representatives
Jefferson (Beaumont-Port Arthur)	7	3
Galveston (Galveston)	19	2
Dallas (Dallas)	26	18
Tarrant (Fort Worth)	32	9
McLennan (Waco)	35	2
Travis (Austin)	37	4
Bexar (San Antonio)	46	11
Nueces (Corpus Christi)	48	3
Hidalgo (Rio Grande Valley)	39	2
El Paso (El Paso)	72	4
Lubbock (Lubbock)	75	2
TOTAL		60

19. Neither the Act in question nor any other statutory or constitutional provision of the State of Texas requires that the multi-member districts be subdistricted or subdivided for purposes of residence so as to distribute representation equally throughout each district except in Harris County where by virtue of the single-member districts provided for said County the population and voters are given true equality of representation.

20. Neither the Act in question nor any other statutory or constitutional provision of the State of Texas provides for nomination on a plurality vote basis of candidates for Representative districts in political party primary elections or in special elections called to fill vacancies in Representative districts. Rather, nomination or election is based on a majority vote basis. requiring, if necessary, the holding of run-off elections for the purpose of insuring a majority vote for the candidate nominated or elected.

21. The Mexican-American population in the State of Texas is a major significant and generally homogeneous ethnic group in said State and comprises approximately twenty per cent of the total population of Texas. This group is culturally identifiable by virtue of language, customs, history, physical characteristics and other factors.

22. Because of long standing social, legal, economic, political, educational and other widespread and prevalent restrictions, customs, traditions, biases and prejudices, some of a *de jure* and some of a *de facto* character, the Mexican-American population of the State of Texas whether residing in metropolitan or smaller urban areas or in rural areas or communities, has historically suffered from, and still does, the results and effects of invidious discrimination and treatment in the fields of education, employment, health, politics, economics and others. As a result thereof this population

group in the cities, towns, urban and metropolitan areas generally resides in barrios characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall areas of each town, city, urban area or metropoli. Said barrios are predominantly inhabited by members of the Mexican-American ethnic group most of whom are of a lower socio-economic status than the prevailing status in the town, city, urban area or metropoli wherein a given barrio is located.

23. This ethnic group is concentrated geographically in the area comprising the Representative districts listed in Paragraph 10 herein. As stated above, other sizeable "pockets" of this group are found in barrios located in cities such as Houston, Austin, Fort Worth, Lubbock and others as well as in the West Dallas and Little Mexico areas of the City of Dallas, Dallas County, Texas. This group statewide is encompassed within the class denominated as Class A in this suit. Additionally specific barrios are located in Robstown, Nueces County, Texas with the Mexican-American population in said barrio being represented by Class B herein; in the West and South parts of San Antonio, Bexar County, Texas with the Mexican-American population in said barrios being represented herein by Class C; and in the West Dallas and Little Mexico area of the City of Dallas, Dallas County, Texas with the Mexican-American population therein being represented by Class D.

24. Because of the situation facing the Mexican-American population in Texas as a statewide class as denominated by Class A or as a class in the specific areas hereinabove referred to in connection with Classes B, C and D, this group has common interests in substantive legislation to resolve the many problems besetting the group in the various fields hereinabove mentioned. Accordingly, said

group has the right to exercise the full force and effect of its voting strength in the nomination and election of members of the Texas House of Representatives and not to have said strength cancelled, diluted or minimized by an apportionment scheme that operates in an inviduously discriminatory manner against said group both on a statewide basis and in specific areas of barrios where said group predominates in substantial numbers.

FIRST CAUSE OF ACTION

25. In respect to this First Cause of Action, Plaintiff-Intervenors reaver and incorporate herein by reference all of the allegations contained in Paragraphs 1 through 24 above the same as if they were fully set forth herein.

26. All of the Plaintiff-Intervenors as individual citizens of the United States and residents and voters of the State of Texas and of the respective areas wherein each resides allege that the Act in question is unconstitutional for the reason that it creates 23 single-member districts in Harris County but creates 11 multi-member districts for 60 Representatives without providing for residential subdistricts so as to insure representation from the various areas of the multi-member districts who have from 2 to 18 Representatives nominated or elected at-large and by doing so violate Plaintiff-Intervenors' guarantees of equal protection of the laws and the right to vote pursuant to the Fourteenth and Fifteenth Amendments to the United States Constitution.

SECOND CAUSE OF ACTION

27. In respect to this Second Cause of Action, Plaintiff-Intervenors reaver and incorporate herein by reference all of the allegations contained in their First Cause of Action the same as if they were fully set forth herein.

28. All of the Plaintiff-Intervenors as individual Mexican citizens of the United States and as residents and voters of the State of Texas and of the respective areas wherein they reside and as representatives of Class A herein and on behalf of said Class and others similarly situated, allege that the Act in question is unconstitutional for said Act fails to establish residential requirements for Representatives in all the multi-member districts so as to distribute legislative representation equally throughout the respective areas of said districts. Said Act further fails to provide for the nomination and election of Representatives in political party primary elections or in special elections on a plurality vote basis. Accordingly, the purpose and effect of the electorial scheme of said Act is to cancel, dilute and minimize the full force and effect of the voting strength of said class in the electoral process for the Texas House of Representatives and thereby violates said parties' guarantees of equal protection of the laws and the right to vote pursuant to the Fourteenth and Fifteenth Amendments to the United States Constitution.

THIRD, FOURTH AND FIFTH CAUSES OF ACTION

29. In respect to these Third, Fourth and Fifth Causes of Action, Plaintiff-Intervenors reaver and incorporate herein by reference all of the allegations contained in their First and Second Causes of Action the same as if they were fully set forth herein.

30. All of the Plaintiff-Intervenors cited hereinabove as representatives as Classes B, C and D, as individual Mexican-American citizens and as residents and voters of the State of Texas and of the respective areas wherein they reside and as representatives of their respective classes and on behalf of their respective classes and all others similarly situated, allege as to each class mentioned herein

and by way of cause of action as to each class, that the Act in question is unconstitutional for said Act fails to establish residential requirements for Representatives in the multi-member districts relating to Nueces, Bexar and Dallas Counties so as to distribute legislative representation throughout said counties and in the concomittant multi-member Representative districts. Said Act as to said counties fails to provide for the nomination and election of Representatives in political party primary elections or in special elections on a plurality vote basis. Accordingly, the purpose and effect of the electoral scheme of said Act is to cancel, dilute and minimize the full force and effect of the voting strength of Classes B, C and D in Nueces, Bexar and Dallas Counties and in their concomittant multi-member Representative Districts as it relates to the electoral process for the Texas House of Representatives and thereby violates said parties' guarantees of equal protection of the laws and the right to vote pursuant to the Fourteenth and Fifteenth Amendments to the United States Constitution.

SIXTH CAUSE OF ACTION

31. In respect to this Sixth Cause of Action, Plaintiff-Intervenors reaver and incorporate herein by reference all of the allegations contained in their First through Fifth Causes of Action the same as if they were fully set forth herein.

32. All of the Plaintiff-Intervenors, as individual Mexican-American citizens of the United States and as residents and voters of the State of Texas and of the respective areas wherein they reside and as representatives of Class A herein and an behalf of said class and all others similarly situated, allege that the Act in question is unconstitutional for said Act constitutes a sophisticated gerrymander so as to

minimize the representation in the Texas House of Representatives of said class. In this connection said parties allege on information and belief that certain Representative districts set forth in said Act (to wit: Districts, 47, 39, 45, 56 and 70), counties with high proportions of Mexican-American population which have been combined with counties wherein this ethnic group is in very low proportion so as to cancel, dilute and minimize the voting strength of this ethnic group as it relates to the electoral process for the Texas House of Representatives and to negate any possibility for said group to obtain fair and equitable representation in said House on the same basis as other significant racial, ethnic and political segments of the State's population. Accordingly, said Act thereby violates said parties' guarantees of equal protection of the laws and the right to vote pursuant to the Fourteenth and Fifteenth Amendments to the United States Constitution.

SEVENTH CAUSE OF ACTION

33. In respect to this Seventh Cause of Action, Plaintiff-Intervenors reaver and incorporate herein by reference all of the allegations contained in their First through Sixth Causes of Action the same as if they were fully set forth herein.

34. All of the Plaintiff-Intervenors, individually and as representatives of and on beralf of the classes which each one represents and all others similarly situated, adopt the allegations of Paragraph IV of the Original Complaint.

PRAYER

WHEREFORE, Plaintiff-Intervenors, individually and as representatives of the various Classes herein and on behalf of all others similarly situated, pray that the Court:

A. Grant intervention as a matter of right pursuant to Rule 24(a)(2), F. R. Civ. P., or, in the alternative, as a matter of permissive intervention pursuant to Rule 24(b)(2), F. R. Civ. P.

B. Order that where applicable this matter be litigated as a class action.

C. Declare the Act in question of the Legislative Redistricting Board of Texas to be unconstitutional, null and void and of no legal force and effect.

D. Appoint a Master pursuant to Rule 53, F. R. Civ. P., to hold hearings to be open to all persons and classes for the purpose of arriving at a plan that is constitutionally sufficient for the apportionment of the Texas House of Representatives and to make such findings of fact and conclusions of law as are proper or necessary.

E. Hold such other and further hearings upon the findings, conclusions and report of such Master and for taking such additional evidence as is necessary for the consideration of a constitutionally sufficient plan for the apportionment of the Texas House of Representatives.

F. Adopt such a constitutionally sufficient plan and make such Findings of Fact and Conclusions of Law as may be necessary.

G. Adjudge all costs against the Defendants including reasonable attorney's fees.

H. Retain jurisdiction to render such further and additional orders as it may from time to time deem appropriate.

I. Grant such other and adaditional relief, at law or at equity, as may be appropriate.

Respectfully submitted,

/s/ ED IDAR, JR.
ED IDAR, JR.
MARIO OBLEDO
JIM HEIDELBERG
GEORGE KORBEL
319 Aztec Building
211 East Commerce Street
San Antonio, Texas 78205

FRANK HERNANDEZ
HERNANDEZ, CAZORLA & ALEXANDER
300 Southwest Building
Dallas, Texas 75202

Attorneys for Plaintiff-Intervenors

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Complaint in Intervention has been served upon counsel and parties as noted below by placing in the United States mail, postage prepaid, this 24th day of November, 1971.

Tony Korioth, Esq.
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Austin, Texas 78701

Oscar H. Mauzy, Esq.
Mullinax, Wells, Mauzy & Baab, Inc.
1601 National Bankers Life Bldg.
Dallas, Texas 75201

David R. Richards
Clinton & Richards
600 West 7th Street
Austin, Texas 78701

Hon. Preston Smith
Governor of the State of Texas
Capitol Building
Austin, Texas

Hon. Bob Bullock
Secretary of State of the State of Texas
Capitol Building
Austin, Texas

Hon. Crawford Martin
Attorney General of the State of Texas
Capitol Station
Austin, Texas 78711
Attn: Alfred Walker, Esq.

Mr. Roy Orr, Chairman
Texas State Democratic Executive Committee
320 Woodhaven
DeSoto, Texas

Dr. George Willeford, Chairman
Texas State Republican Executive Committee
310 Littlefield Bldg.
Austin, Texas

Mr. J. Burns Brown, Chairman
Smith County Democratic Executive Committee
P. O. Box 908
Tyler, Texas

Mr. Gene Diedrick, Chairman
Smith County Republican Executive Committee
600 Barclay
Tyler, Texas

/s/ ED IDAR, JR.
Ed Idar, Jr.

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CIVIL ACTION NO. A 71-CA-143

DIANA REGESTER, ROBERT G. MIMS,
B. C. CLAYTON AND STEPHEN E. MCCONNICO,
Plaintiffs,

v.

BOB BULLOCK,
SECRETARY OF THE STATE OF TEXAS, ET AL.
Defendants,

GEORGE L. ALLEN, DR. E. J. CONRAD,
REV. ZAN W. HOLMES, JR., ET AL
Intervenors.

INTERVENORS' COMPLAINT

TO THE HONORABLE JUDGES OF SAID COURT:

I.

This is a class section pursuant to Rule 23(a), 23(b) and 24 of the Federal Rules of Civil Procedure (hereinafter called Plaintiff-Intervenors) hereby intervene to challenge the constitutionality of the plan for apportioning the Texas House of Representatives as violative of said Plaintiff-Intervenors' rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

II.

Jurisdiction is conferred upon this Court by 28 United States Code, Section 1343, providing for jurisdiction over claims arising under 42 United States Code, Sections 1971, 1981, 1983 and 1988. This is further a proceeding for a declaratory judgment, pursuant to Title 28 United States Code, Sections 2201 and 2202 to determine and define the legal rights and relations of Plaintiff-Intervenors as they relate to the power, duties and responsibilities of the Texas State Redistricting Board to insure that any apportionment plan does not have the purpose and will not have the effect of denying or abriding the right to vote on account of race or color.

III.

Plaintiff-Intervenors are George L. Allen, City Councilman for the City of Dallas, Texas, Dr. E. J. Conrad, Trustee of the Dallas Independent School District and Rev. Zan W. Holmes, Jr., State Representative, Place 5, Dallas County, Texas, all black resident citizens and qualified voters in Dallas County, Texas.

IV.

Plaintiff-Intervenors, pursuant to Rule 23(b)(1) and (b)(2) of the Federal Rules of Civil Procedure bring this action on their own behalf, on behalf of all black resident citizens and qualified voters in Dallas County, Texas. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims and defenses of Plaintiff-Intervenors are typical of the claims and defenses of the class; and Plaintiff-Intervenors will fairly and adequately protect the interest of the class. Adjudication with respect to individual members of the class would as

a practical matter be dispositive of the interest of the other members not parties to the adjudication. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole.

V.

Plaintiff-Intervenors adopt the allegations of Paragraph 1 of Plaintiffs' Original Complaint with respect to the designation of parties.

VI.

Acting under color of the authority conferred upon them by the provision of Section 28, Article III of the Texas Constitution, the Defendants have adopted and are presently pursuing a plan, policy and practice in which all qualified voters of Dallas County are entitled to vote for one candidate for the House of Representatives in each of eighteen places on the ballot.

VII.

There exist in Dallas County areas which are continuous and circumscribed by certain known geographic boundaries and which areas are hereinafter referred to as the Dallas County Black Community. Said areas have certain definable racial, social, economic and political characteristics which cause the residents and the voters therein to be a cognizable minority interest group.

VIII.

Long years of systematic and deliberate oppression, discrimination, enforced proverty, and political neglect have deprived black residents of Dallas County from participating in the political systems through obvious dis-

criminatory election schemes intentionally designed to dillute or cancel out the vote of said black residents.

IX.

The black residents of Dallas County have areas of specific concern of which heretofore have not been dealt with in a manner that satisfied them but they have no way to express their dissatisfaction with their representative because those representatives did not have to rely on their vote for election anyway.

X.

Permitting all residents of Dallas County to vote for all candidates for the Texas House of Representatives without regard to the interest of the residents has as its affect to deny the Dallas County Black Citizens their right to vote thus in contravention to the Fifteenth Amendment to the United States Constitution.

XI.

Permitting all candidates to run at large in Dallas County has the invidious effect of placing black candidates from Dallas County in direct competition with white candidates who are better financed, more exposed to the white majority electorate which has the final say-so as to who is elected is in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

XII.

Permitting the residents of Harris County to elect REPRESENTATIVES on a single member district basis accords preferential treatment to residents of said Harris County to the according of multi-member at large representatives to Dallas County residents and all other counties with the large populations is in violation of the Equal Protection Clause of the Fourteenth and Fifteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff-Intervenors prays that upon trial hereof, that the Court enter an Order declaring the Act of the Texas Legislative Redistricting Board in violation of the Equal Protection Clause of the Fourteenth and Fifteenth Amendments to the United States Constitution as having the affect of invidiously discriminating against the black voters of Dallas County and denying said black voters the right to vote, and that this Court adopt a single-member apportionment plan to ensure compliance with well-known constitutional principles of law, and that the Court retain jurisdiction and render such further orders and other relief at law and in equity as may be appropriate and as these Plaintiffs-Intervenors may be entitled.

Respectfully submitted,

.....

E. BRICE CUNNINGHAM
2606 Forest Ave.— Suite 202
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(214) 428-3793

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Attorneys for Plaintiff-Intervenors
GEORGE L. ALLEN
DR. E. J. CONRAD
REV. ZAN W. HOLMES, JR., ET AL.

PROOF OF SERVICE

This is to certify that a true copy of the foregoing Motion to Intervene and Intervenors' Complaint has been served upon counsel as noted below by personally delivering a copy of same to each of them on this the 22nd day of December, 1971:

Tony Korioth, Esq.
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Oscar H. Mauzy, Esq.
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Honorable Crawford Martin
Attorney General of the State of Texas
Capitol Station
Austin, Texas 78711
Attention: Alfred Walker, Esq.

David R. Richards
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600 West 7th
Austin, Texas 78701

Walter L. Irvin, Esq.
301 North Market Street
Dallas, Texas 75202

Cleo Steele, Esq.
2818 Pennsylvania
Dallas, Texas 75215

.....

E. BRICE CUNNINGHAM

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. CA-3-5241-A

JOHNNY MARRIOTT, ET AL.,
Plaintiffs,

v.

PRESTON SMITH,
Governor of the State of Texas,
BOB BULLOCK,
Secretary of State of the State of Texas,
the Texas Legislative Redistricting Board,
BEN BARNES,
Lieutenant Governor of the State of Texas,
G. F. MUTSCHER,
Speaker of the Texas House of Representatives,
BOB ARMSTRONG,
Commissioner of the General Land Office,
ROBERT S. CALVERT,
Comptroller of Public Accounts, and
CRAWFORD MARTIN,
Attorney General of Texas,
Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

I.

PRELIMINARY STATEMENT

Plaintiffs, individually and on behalf of all other persons similarly situated, seek to have this Court declare

invalid and enjoin elections being conducted pursuant to those apportionment plans of the Texas House of Representatives of the State of Texas promulgated and adopted by the Texas Legislative Redistricting Board and filed with the Secretary of State. Such apportionment plans are challenged on the grounds that they are in conflict with the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

II.

JURISDICTION

1. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1343.

2. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. § 2201 and 2202.

III.

THREE-JUDGE COURT

This is a proper case for determination by a Three-Judge Court pursuant to 28 U.S.C. § 2281 and 2284, and that Plaintiffs seek an injunction to restrain the Defendants, who are State officers, from the enforcement, operation and execution of a State statute, the apportionment plans of the Texas House of Representatives of the State of Texas, of state-wide applicability on the grounds that said statutes are contrary to the Constitution of the United States.

IV.

PLAINTIFFS

1. The Plaintiff, Johnny Marriott, is a resident of the State of Texas and resides in the County of Dallas, in the State of Texas, and within the City of Hutchins, in said

County is a duly registered and qualified voter. The aforesaid is a member of the Democratic Party and has a preference for those candidates of the Democratic Party running for office in the House of Representatives of the State of Texas.

2. The Plaintiff, C. Sims, is a citizen of the State of Texas and resides within the County of Dallas, and within the City of Dallas, within an area identifiable as a racial minority area. The aforesaid Plaintiff is a Negro and is a duly qualified and registered voter.

3. The Plaintiff, Mrs. Tom Sneary, is a resident of the State of Texas and resides in the County of Dallas, in the State of Texas, and within the City of Dallas, is a white female and is a duly registered and qualified voter.

4. The Plaintiff, W. C. Thetford, is a resident of the State of Texas and resides in the County of Dallas in the State of Texas, and within the City of Dallas, in said County is a duly registered and qualified voter.

5. The Plaintiff, Gwendolyn Ann Hickey, is a resident of the State of Texas and resides in the County of Dallas, in the State of Texas, and within the City of Dallas, is a white female and is a duly registered and qualified voter.

V.

CLASS ACTION

Plaintiffs bring this action on their own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The members of the class similarly situated are all those individuals who are duly qualified and registered voters of the State of Texas and who reside in a County where two or more members of the Texas House of Representa-

tives are elected under the presently challenged plan of apportionment upon an at large basis. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impractical; there are questions of law fact common to the class; the claims of the representative party are typical of the claims of the class; the representative parties will fairly and adequately protect the interest of the class; and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

VI.

DEFENDANTS

1. Defendant Preston Smith is the Governor of the State of Texas and the Chief Executive Officer of the State with the responsibility of enforcing the laws of the State of Texas.

2. Defendant Bob Bullock is the Secretary of State of the State of Texas and is the Chief Election Officer of the State of Texas with the responsibility of implementing the election laws of the State of Texas.

3. Defendant Ben Barnes is the Lieutenant Governor of the State of Texas and is a member of the Legislative Redistricting Board pursuant to the provisions of Section 28 of Article III of the Constitution of Texas.

4. Defendant G. F. Mutscher is the Speaker of the Texas House of Representatives and is a member of the Legislative Redistricting Board pursuant to the provisions of Section 28 of Article III of the Constitution of Texas.

5. Defendant Bob Armstrong is the Commissioner of the General Land Office and is a member of the Legislative

Redistricting Board pursuant to the provisions of Section 28 of Article III of the Constitution of Texas.

6. Defendant Robert S. Calvert is the Comptroller of Public Accounts and a member of the Legislative Redistricting Board pursuant to the provisions of Section 28 of Article III of the Constitution of Texas.

7. Defendant Crawford C. Martin is the Attorney General of the State of Texas and is a member of the Legislative Redistricting Board pursuant to the provisions of Section 28 of Article III of the Constitution of Texas.

8. The Legislative Redistricting Board, created pursuant to the provisions of Section 28 of Article III of the Constitution of Texas, has the duty of apportioning the Texas House of Representatives and the Senate of the State of Texas under the conditions specified therein, and such Board acting through the members thereof who have been made parties to this suit, has filed with the Secretary of State plans for the apportionment of the Texas House of Representatives and the Texas Senate.

9. The Plaintiffs sue each of the aforementioned Defendants, both individually and in his official capacity.

VII.

PLAINTIFFS' CAUSE OF ACTION

1. The Legislature of the State of Texas at its Regular Session in 1971 failed to enact a statute apportioning the Senate of the State of Texas as required by Section 28 of Article III of the Constitution of Texas.

2. The Legislature of the State of Texas at its Regular Session in 1971 enacted a statute apportioning the membership of the House of Representatives of the State of Texas,

but such enactment was subseqently held invalid by the Supreme Court of the State of Texas.

3. The Legislature of the State of Texas having failed to apportion the membership of the Texas House of Representatives and the Texas Senate pursuant to the provisions of Section 28 of Article III of the Constitution of Texas, the duty of making such apportionment is vested in the Legislative Redistricting Board pursuant to the provisions of Section 28 of Article III of the Constitution of Texas and such Board has apportioned both the Texas House of Representatives and the Texas Senate by plans filed with the Secretary of State of the State of Texas as required by the provisions of Section 28 of Article III of the Constitution of Texas.

4. Pursuant to the apportionment plans here challenged two or more members of the House of Representatives run at large within the same area in several instances, including the following: Dallas County, Travis County, Tarrant County, and Bexar County.

5. That each of the Plaintiffs resides in a district where two or more members of the House of Representatives run at large.

6. That the Plaintiff, Johnny Marriott, is a member of the Democratic Party and has a preference to vote for candidates representing the Democratic Party.

7. That there is an identifiable political element within the district within which the aforesaid Plaintiff resides which are the same political views and interests of the aforesaid Plaintiff. However, those individuals, such as the aforesaid Plaintiff, possessing such political views and preferences are in a minority.

8. That the Plaintiff, Gwendolyn Ann Hickey, is a white female, is of the Catholic faith, and is a university student.

9. That there is an identifiable political element within the district within which the aforesaid Plaintiff resides which are of the same political views and interests of the aforesaid Plaintiff. However, those individuals, such as the aforesaid Plaintiff, possessing such political views and preferences are in a minority.

10. That the Plaintiff, Mrs. Tom Sneary, is a white female, is a member of the Democratic Party and has a preference to vote for candidates representing the Democratic Party.

11. That there is an identifiable political element within the district within which the aforesaid Plaintiff resides which are of the same political views and interests of the aforesaid Plaintiff. However, those individuals, such as the aforesaid Plaintiff, possessing such political views and preferences are in a minority.

12. That the Plaintiff, W. C. Thetford, is a member of the Democratic Party and has a preference to vote for candidates representing the Democratic Party.

13. That there is an identifiable political element within the district within which the aforesaid Plaintiff resides which are of the same political views and interests of the aforesaid Plaintiff. However, those individuals, such as the aforesaid Plaintiff, possessing such political views and preferences are in a minority.

14. That the Plaintiff, C. Sims, is a Negro residing within one of the districts created by the challenged apportionment plans which elects two or more members of the Texas House of Representatives upon an at large

basis. That the aforesaid Plaintiff is a member of an identifiable racial element within the district which he resides, and such identifiable racial element have common interests of a political, social, and economic nature.

15. That the creation of multi-member districts of the Texas House of Representatives invidiously dilutes the force and effect and voting strength of the racial, religious, student and political group within their respective districts whch are represented by the Plaintiffs herein and such dilution or minimization violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

16. That the creation of single-member districts in the apportionment of the Texas House of Representatives, as opposed to multi-member districts, would equalize the voting strength and power among the districts of the State of Texas and would avoid the diluting or minimizing of the force and effect and voting strength of political, religious, student, or racial groups which occurs in multi-member districts.

VIII.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Assume jurisdiction of this cause, convene a Three-Judge District Court pursuant to 28 U.S.C. § 2281 and 2284 to determine this controversy, and set this cause down promptly for a hearing.

2. Determine by order pursuant to Rule 23 of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. Pending a hearing and determination by the Three-Judge Court, grant a temporary restraining order pursuant to 28 U.S.C. § 2284, restraining the Defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from conducting elections under the challenged apportionment plans for the Texas House of Representatives.

4. Upon final hearing declare that the apportionment plans of the Texas House of Representatives, insofar as they provide for multi-member districts rather than all single-member districts, are unconstitutional and in violation of the Equal Protection Clause of the Fourteenth Amendment.

5. Enter a permanent injunction enjoining the Defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from conducting elections pursuant to the challenged apportionment plans of the Texas House of Representatives and any other plan of apportionment which does not provide for single-member districts.

6. Direct the Legislative Redistricting Board or the State of Texas to reapportion the House of Representatives of the State of Texas into single-member districts within a specified period of time, or in the alternative that this Court reapportion the Texas House of Representatives into single-member districts.

7. That this Court retain jurisdiction until all orders and mandates of the Court have been complied with.

8. That the Court allow Plaintiffs their cost herein, and also grant them and all other persons similarly situated

such additional or alternative relief as may seem to this Court to be just, proper and equitable.

Respectfully submitted,

.....

ROBERT M. GREENBERG
Attorney for Plaintiffs
1105 Mercantile Securities Bldg.
Dallas, Texas 75201 748-5348

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

CIVIL ACTION FILE NUMBER: 3-5241-A

JOHNNY MARRIOTT, ET AL.,

Plaintiffs,

v.

PRESTON SMITH,
Governor of the State of Texas,

BOB BULLOCK,
Secretary of State of the State of Texas,
the Texas Legislative Redistricting Board,

BEN BARNES,
Lieutenant Governor of the State of Texas,

G. F. MUTSCHER,
Speaker of the Texas House of Representatives,

BOB ARMSTRONG,
Commissioner of the General Land Office,

ROBERT S. CALVERT,
Comptroller of Public Accounts, and

CRAWFORD MARTIN,
Attorney General of Texas,

Defendants.

DEFENDANTS' ORIGINAL ANSWER TO COMPLAINT AND COMPLAINT IN INTERVENTION

The named officials of the State of Texas made Defendants in this cause answer complaint as follows:

I.

The allegations of Plaintiffs' Paragraphs II and III are admitted.

II.

The Defendants do not have sufficient information to either admit or deny the allegations of Plaintiffs' Paragraph IV.

III.

In response to Plaintiffs' Paragraph V Defendants do not know whether this is a proper suit for class action but have no objection to a class action so long as the class is properly established and final judgment is binding upon all members of the class.

IV.

The allegations of Plaintiffs' Paragraph VI are admitted.

V.

The various Sub-paragraphs of Plaintiffs' Paragraph VII are either admitted or denied as follows:

Sub-paragraph 1, 2, 3, and 4 are admitted.

Sub-paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 are neither admitted nor denied because the Defendants have insufficient information upon which to base an admission or denial.

Sub-paragraph 15 and 16 are denied.

VI.

The Defendants join in Sub-paragraph 1 of Plaintiffs' Paragraph VIII (prayer for relief.) Defendants join in the request that the Court determine whether this shall be maintained as a class action. Defendants request the Court to deny the relief prayed for in Paragraph VIII, Sub-paragraphs 3, 4, 5, 6, 7, and 8.

VII.

ANSWER TO INTERVENTION

The Defendants have no objection to the intervention of TOM CROUCH, JOHN N. NEEDOM, DR. MORT

JONES, WILLIAM M. BASS, ALFRED J. HILL and MARY ANN COLLINS.

Defendants answer the Complaint in Intervention as follows:

VIII.

Intervenors' Paragraph I and II are neither admitted nor denied because of insufficient factual information.

IX.

Paragraph III of the Petition in Intervention is denied insofar as it alleges that Intervenors' rights under the federal and state constitutions have been abridged, denies that there has been unfair, unjust and invidious discrimination and neither admits nor denies the allegations concerning class action because of insufficient information.

X.

Paragraph IV of the Petition in Intervention is denied.

XI.

Plaintiff's Paragraph V is denied insofar as it alleges the acts of the Legislative Redistricting Board denies a cognizable political element effective access to the political system and tends to cancel, minimize and dilute their voting strength. The remaining allegations of Intervenors' Paragraph V are neither admitted nor denied because of insufficient information.

XII.

The allegations of Intervenors' Paragraph VI are denied except insofar as they point out that Harris County was apportioned into single member districts and Dallas County into a multi-member district.

XIII.

The allegations of Intervenors' Paragraphs VII, VIII and IX are denied.

XIV.

The allegations of Intervenors' Paragraph X is denied insofar as it alleges that the Senatorial apportionment is any evidence of the practicability of House apportionment and is otherwise neither admitted nor denied because of insufficient information.

XV.

Defendants pray that Intervenors' prayer for relief be denied in its entirety.

XVI.

Defendants deny that any of the constitutional rights of Plaintiffs or Intervenors have been abridged or denied by the challenged apportionment of the Texas House of Representatives and request the Court to deny Plaintiffs and Intervenors relief in this action; to grant Defendants their cost; and to grant Defendants any other relief to which they are entitled.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

/s/ SAMUEL D. McDANIEL
Samuel D. McDaniel
Staff Legal Assistant

CERTIFICATE OF SERVICE

A copy of the foregoing answer has been furnished to each attorney of record listed in the original complaint and the complaint in intervention.

/s/ SAMUEL D. McDANIEL
Samuel D. McDaniel

In The

United States District Court

Western District of Texas

Austin Division

Diana Regester, et al

v.

Bob Bullock, et al

Van Henry Archer, Jr., et al

v.

Preston Smith, et al

Civil Action

No. A-71-CA-145

PRETRIAL ORDER

This matter having come before the Court at a pretrial conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure, 28 U.S.C.; and ED IDAR, JR., GEORGE KORBEL, NATHAN W. EASON. J. DOUGLAS McGUIRE having appeared as counsel for the plaintiffs, and SAM McDANIEL having appeared as counsel for the defendants; the following action was taken:

NATURE OF ACTION AND JURISDICTION

Insofar as named Plaintiffs, and various Intervenor Plaintiffs, these are actions filed pursuant to 42 U.S.C. 1343, 1983 to redress violations of the rights of Plaintiffs by the Fourteenth and Fifteenth Amendments to the United States

Constitution, in addition thereto, jurisdiction is claimed pursuant to 28 U.S.C. 2201, 2202 and Rules 57, 23 and 24 of the Federal Rules of Civil Procedure.

The following stipulations and statements were submitted and made a part of this order:

(a) It is hereby stipulated that the following are uncontested facts, to-wit:

1. Each named intervenor in the Complaint in Intervention filed by JOE J. BERNAL, ET AL, if called to testify, would testify that he is a Mexican-American citizen of the United States and a resident and registered voter in the State of Texas and in his respective city or town and county as alleged in said Complaint. Plaintiffs, VAN ARCHER, JR., ET AL, are residents of the State of Texas and reside in the County of Bexar in said state and are duly registered and qualified voters in said county and state.

2. Neither the act of the Texas Legislative Redistricting Board reapportioning the Texas House of Representatives nor any other statutory or consitutional provision of the State of Texas requires that the multi-member districts be sub-districted or subdivided for purposes of residence of the candidates running in each of said districts.

3. Neither the Act of the Texas Legislative Redistricting Board nor any other statutory or constitutional provision of the State of Texas provides for nomination on a plurality vote basis of candidates for Representative districts in political party primary elections or in special elections called to fill vacancies in Representative districts. Rather, nomination or election is based on a majority vote basis requiring if necessary the holding of run-off elections for the purpose of insuring a majority vote for the candidate nominated or elected.

4. The members of the Texas Legislative Redistricting Board consisted of the following: LT. GOV. BEN BARNES, ATTORNEY GENERAL CRAWFORD MARTIN, LAND COMMISSIONER BOB ARMSTRONG, COMPTROLLER OF PUBLIC ACCOUNTS, ROBERT S. CALVERT, SPEAKER OF THE HOUSE, GUS MUTSCHER.

5. Exhibit A and B to these stipulations are true and correct copies of the Acts of the Texas Redistricting Board, redistricting the State of Texas into House and Senate Districts for the Texas Legislature and the attachments thereto are the maps and materials prepared by the Texas Legislative Council to accompany said Acts.

6. During the period of 1960 to 1970 the persons elected Governor, Lt. Governor, Attorney General, Land Commissioner and Comptroller of Public Accounts have been nominated on the Democratic ticket and elected.

7. None of the named Plaintiffs in the above cited cases has been denied the right to register or to vote in the State of Texas since 1961.

8. That the Republican and Democratic parties constitute recognizable political groups in Texas and are the two most numerous political groups in Texas.

9. The City of San Antonio and the City of Terrell Hills are home rule cities pursuant to the Home Rule Provision of the Texas Constitution and the statutes of the State of Texas.

(b) Potential witnesses:

1. For BERNAL intervenors: MATT GARCIA, Attorney at Law, RUDY ESQUIVEL, Attorney at Law, ROBERT VALE, Attorney at Law, MAX FUENTES, Attorney at Law, JOHN ALANIS, Attorney at Law,

RICHARD AVENA, official of the U. S. Civil Rights Commission, CLIFFORD McCLESKEY, University of Texas Professor, DR. RICHARD CANTRELL of St. Mary's University and GEORGE KORBEL, Attorney at Law.

2. For the ARCHER Plaintiffs: VAN HENRY ARCHER, JR., M. O. TURNER, R. L. (BOB) STRICKLAND.

3. Defendants' witnesses: GILBERT GARZA, CHARLES SKIPPER and ROY BARRERA.

4. Members of the Redistricting Board may be called by either of the parties.

(c) ARCHER ET AL contend that the contested issues of fact and law are the following:

1. The action by the Legislative Redistricting Board in awarding single-member districts in Harris County and making all other metropolitan areas in the state into multi-member districts is discriminatory against such multi-member districts principally because of diluton of the vote of racal, ethnic, political and other minority groups, together with discrimination against all voters and citizens in the multi-member districts.

2. That Senatorial District 21 lacks those elements of the constitutional and legal guidelines as set forth by the Courts, to-wit: lack of community of interest, contiguity and compactness, and failure to weigh ethnic, political and racial elements located within the district, a disregard of these guidelines, if not an actual concerted plan to protect those senators now in office in Districts 19 and 26 by the gerrymandering of said district to include those portions of Bexar County as set out in the plan.

3. Texas Legislative Redistricting Board, Legislative and Senatorial Plans, as adopted, are unconstitutional and

in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

(d) BERNAL, ET AL contends that the following are the contested issues of fact and law:

1. Whether the population deviations in the House Reapportionment Plan are constitutionally permissible in absence of any justification other than the asserted impossibility of achieving population equality without further cutting county lines.

2. Whether the use of multi-member districts in Dallas County by design or effect dilutes the voting strength of black, Mexican-American economic or political minorities located in those districts.

3. Whether the falure of the State to offer any justification for the mixed use of single and multi-member districts alters the burden under *Whitcomb* for plaintiffs to demonstrate the discriminatory effect of multi-member districts.

4. Whether the inconsistent, irrational and unexplained mixed use of multi-member and single-member districts in the State's plan is constitutionally impermissible.

5. Whether a state with a long history of a policy of racial discrimination has a positive duty to avoid building upon the effects of this past discrimination when drawing a plan of Legislative reapportionment or alternatively, has an affirmative obligation to insure that the interests of this disadvantaged minority is adequately represented.

6. Whether the Act of the Legislative Redistricting Board on October 22, 1971, effectively denies the rights of citizens and qualified voters of Bexar County the same opportunity to run for office of State Representative as the similarly-situated residents of a single-member district.

7. Whether the Act of the Legislative Redistricting Board on October 22, 1971, violates state constitutional and statutory provisions by splitting the excess population of some counties into two different legislative districts, rather than placing all such excess population in one contiguous district.

8. Whether the fact that Harris County as well as Dallas, Bexar, Tarrant and other multi-member districts under the Act of the Legislative Redistricting Board are large and will elect a substantial proportion of the seats in the Texas House makes said Act illegal since only Harris County is divided into single-member districts.

9. Whether the fact that there is no formalized process for slating candidates by the Democratic or Republican Parties in Texas or any other political party results in a denial to the Mexican-American class of an equally effective voice in the election of the members of the Texas House.

10. Whether the cost of conducting campaigns for election to the Texas House in large multi-member districts is such that the voting strength of the Mexican-American class is diluted, minimized, cancelled out or submerged in such large multi-members districts.

11. Whether the fact that the Act in question by giving single-member districts to Harris County does give the black minority in said county an equally effective voice in the election of members of the Texas House but denies the same to others of the black population as well as to the Mexican-American class in other large multi-member districts, particularly Dallas and Bexar Counties, results in denial of equal protection to those adversely affected.

12. Whether the fact that the Act in question does insure an equally effective voice to the black population in Harris County but denies the same to the Mexican-Ameri-

can class in the large multi-member districts, particularly Bexar County, constitutes an unconstitutional discrimination as between said minority groups.

13. Whether the Texas Legislative Redistricting Board by the nature of its composition is entitled to be termed a legislative body in the same sense as the Texas Legislature so as to fall within the purview of judicial restraint applicable to redistricting Acts enacted by a legislature.

(e) The Defendants contend the disputed issues of fact and law are the following:

1. The Defendants contest each of the questions posed by Plaintiffs and Intervenors above.

2. Defendants contest that this Court has jurisdiction under the Federal statutes alleged by Plaintiffs.

3. Defendants contest that any cause of action upon which relief can be granted has been pled by any plaintiff or intervenor.

4. Defendants contest that there is anything illegal, unconstitutional or discriminatory under the Constitution or laws of the United States or this State in the Redistricting Plan adopted by the Board and says that such plans are fair, equitable and just and in compliance with such laws and constitutions.

5. It is the defendants' position that the Constitution does not protect political parties from losing elections.

6. Such population deviations that exist in the House Apportionment Plan are constitutionally permissible and justified.

(f) No claims or defenses are waived.

The foregoing was modified at the pretrial conference as follows:

PLAINTIFFS

(A)

The exhibits of BERNAL ET AL, intervenors are marked "BI" and are listed as follows and offered by plaintiffs subject to the objections listed below:

BI #1 is a pin map showing residence of legislative candidates from Bexar County. Black top pins show candidates elected, Other colors are coded to years.

BI #2(a) is an overlay showing census tracts which according to the 1960 census were 50% or more Mexican-American except for 2 precincts which are less than 50% Mexican-American.

BI #2(b) is another overlay with census tract information for Bexar County.

BI #2(c) is an overlay showing predominately black, Mexican-American and Anglo sections in Bexar County.

BI #2(d) is an overlay showing 1960 census figures.

BI #3 is a photocopy of a print out of a 1969 Texas State Highway Department Origin and Destination Survey of census tracts in Bexar County used as basis for one of the overlays in re Exhibit #2.

BI #4 is a photocopy of print out of 1970 census tract data for Bexar County showing population characteristics of each tract.

BI #5 is a photocopy of print out of 1970 census data for Bexar County showing housing characteristics of each census tract.

BI #6 is a photocopy of print out 1970 census tract data for Bexar County showing owner occupied units by value.

BI #7 is a U.S. Census Housing Study obtained from Texas Legislative Council used in preparing a memorandum with respect to housing characteristics.

BI #8 is a U.S. Census of Population and Housing: 1960 for the San Antonio Standard Metropolitan Statistical area.

BI #9 is a set of campaign expense reports filed with the County Clerk of Bexar County used to support study made of campaign expenditures in 1970 in House races in said county.

BI #10 is a U.S. Census of Population 1960 Study on Persons of Spanish Surname.

BI #11 is a staff report to the 61st Texas Legislature by the Texas Legislative Council entitled "Employment in State Government. A Statistical Survey by Ethnic Origin."

BI #12 is a publication entitled "Mexican Americans and the Administration of Justice in the Southwest" by the United States Commission on Civil Rights, March 1970.

BI #13 is a summary of Exhibit #12 published by the United States Commission on Civil Rights.

BI #14 Civil Rights in Texas, a report of the Texas Advisory Committee to the U. S. Commission on Civil Rights. February, 1970.

BI #15 is a Report I: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest. Published by the U.S. Commission on Civil Rights in April, 1971.

BI #16 is a Report II of Mexican American Educational Series entitled "The Unfinished Education." Published by the U.S. Commission on Civil Rights in October, 1971.

BI #17 is a published record of proceedings of Hearings

Before the U.S. Commission on Civil Rights held in San Antonio, Texas, December 9 to 14, 1968.

BI #18 is a Hearings before Sub Committee on Executive Reorganization of the Committee on Government Operations of the U.S. Senate in regard to establishment of Interagency Committee on Mexican American affairs.

BI #19 "Spanish Surnamed Americans in the Southwest" by Fred H. Schmidt.

PLAINTIFFS

(B)

The Archer, et al plaintiffs have designated their exhibits "SAR" and they are listed as follows and offered into evidence subject to the objection listed below:

SAR #1 is a map showing the Senate apportionment of part of Bexar County prior to the one at issue in this suit.

SAR #2 is a map showing the per cent of Republican votes for Governor in the area of the present Senate district 21 by counties in the 1966 Governor's election.

SAR #3 is a map showing how precincts in Bexar County voted in the 1968 Governor's election.

SAR #4 is a map showing how precincts in San Antonio voted in the 1968 Governor's election.

SAR #5 — Same as SAR #2 except for 1968.

SAR #6 — Same as SAR #3 except for 1970.

SAR #7 — Same as SAR #4 except for 1970.

SAR #8 — Same as SAR #2 except for 1970.

SAR #9 1966 Tower-Carr per cent map for Bexar County.

SAR #10 1966 Tower-Carr per cent in San Antonio.

SAR #11 1966 Tower Carr per cent map for area in the new 21st Senatorial District.

SAR #12 Letter dated August 24, 1971 from Senator Joe Bernal, memo from the Legislative Redistricting Board of Texas, Exhibits A, B, C, D, E and F attached

Defendants reserve the right to object to Plaintiffs exhibits on grounds of relevancy and where appropriate in the case of publications on the ground of hearsay.

DEFENDANTS

(A)

Defendants' exhibits relating to Bexar County are designated DB and are listed as follows and offered into evidence and received without objection.

DB #1 is a list of representatives and senators of Spanish surname over the past nine sessions of the Legislature. The non-Spanish surnames are blacks.

Defendants Bernal et al reserve the right to object to Defendants's exhibits on the basis of lack of relevancy and improper predicate.

LIABILITIES AND RESERVATIONS

(A)

There is reserved to each of the parties the right to further supplement the list of witnesses upon application to the Court, and for good cause shown.

(B)

There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

(C)

The probable length of the trial is four days. The case will be tried beginning January 4, 1972.

IT IS ORDERED that this Pretrial Order may be modified at the trial of the action, or prior thereto, to prevent manifest injustice. Such modification may be made either on application of counsel for the parties or on motion of the Court.

WM. WAYNE JUSTICE
Judge

January 4, 1972

Approved as to form and substance

.....
Attorney for Plaintiffs,
Bernal, et al

.....
Attorney for Plaintiffs,
Archer, et al

.....
Attorney for Intervenor
Plaintiffs
SAMUEL D. MCDANIEL
Attorney for Defendants

Defendant's
Exibit
D-55

OFFICIAL

VOTER CARD

DEMOCRATIC PRIMARY ELECTION

SATURDAY, MAY 2, 1970

Your precinct is

356

You vote at

J. N. Ervin High School
3722 Black Oak

POLLS OPEN 7 A.M. - 7 P.M.

Back of Handcard

VOTE FOR THESE CANDIDATES MAY 2

THEY'RE FOR THE PEOPLE!

U. S. Senator
RALPH W. YARBOROUGH

U. S. Congress
MIKE McKOOL

Lt. Governor
BEN BARNES

Land Commissioner
BOB ARMSTRONG

State Senator
OSCAR H. MAUZY

State Representative

Pl. 2 — DAVE MOSS
Pl. 3 — BERLAIND BRASHEAR
Pl. 4 — DICK REED
Pl. 5 — ZAN W. HOLMES JR.
Pl. 6 — JOE RATCLIFF
Pl. 9 — JIM STROUD
Pl. 10 — PAUL GOODWIN
Pl. 12 — BILL STEHR

Probate Judge
OSWIN CHRISMAN

Precinct Chairman

DANIEL THOMAS

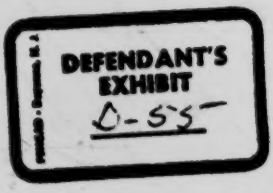
These candidates endorsed by AFL-CIO, Progressive Voters League, Dallas United Labor Committee, Citizens for Fair Taxes

Telegram

DB967 L D LLC431 ET NL PDF DALLAS TEX

URGENT YOU VOTE THIS SATURDAY MAY 2 TO RE-ELECT SENATOR RALPH YARBOROUGH, REP. ZAN HOLMES, SENATOR OSCAR MAUZY AND BERLAIND BRASHEAR. WE NEED THEM TO KEEP FIGHTING FOR OUR RIGHTS AND PROGRESS.

SEE ENCLOSED CARD FOR WHERE AND HOW TO VOTE FOR THE PEOPLE'S CANDIDATES IN THE DEMOCRATIC PRIMARY THIS SATURDAY.



EMMETT J. CONRAD

Back of Telegram

358
345
354
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56

318
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261
262
325
328
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326

MR. UTAH KIRK
2402 NAOMA
DALLAS TEXAS
75241

356

65

Telegram

DEFENDANT'S EXHIBIT
D-45

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

DB080
D LLU53 DL PD=MF DALLAS TEX 21 1214P CST= ~~1968 MAY 21 PM~~

URGENT THAT YOU VOTE TOMORROW FOR OSCAR MAUZY FOR STATE SENATOR. OSCAR MAUZY IS FOR THE PROGRAMS OF PROGRESS BEGUN BY PRESIDENT KENNEDY AND BEING CARRIED FORWARD BY PRESIDENT JOHNSON=

BARBARA JORDAN STATE SENATOR, HOUSTON TEXAS
J LOCKRIDGE DALLAS TEXAS RALPH W YARBOROUGH=

I Not Authorized to Use THIS Name By Democratic Nomm

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

DEFENDANT'S EXHIBIT D

Mauzy Man Named James, Not Joseph Lockridge

Democratic senatorial candidate Oscar Mauzy said Thursday the "J. Lockridge" who signed a telegram sent to several hundred Dallas voters prior to the June 4 runoff was not Democratic House candidate Joseph Lockridge.

The telegram, sent to voters in predominately Negro precincts, was signed, "Barbara Jordan, State Senator, Houston, Texas, J. Lockridge, Dallas, Texas; Ralph W. Yarborough."

Mauzy, who defeated David Ivy in the runoff, said the Lockridge who signed the telegram was "one of my supporters named James Lockridge who is known as J. Lockridge."

Miss Jordan, Democratic state Senate nominee from Houston, and Joseph Lockridge, Democratic nominee for legislative Place 5 from Dallas, both are Negroes.

Joseph Lockridge said he "did not authorize my name to be used with any telegram or letter endorsing Mr. Mauzy."

Mrs. Earlean Clark, Precinct 404 chairman, had mailed a letter prior to the runoff stating, "Joseph Lockridge has endorsed Oscar Mauzy."

The letter also stated:

"Remember, too, that through our efforts Dallas County has elected its first Negro state representative. (Lockridge has a Republican opponent in November.)"

"Lockridge needs Oscar Mauzy in the state Senate to help him achieve more effective representation for the Negro people of Dallas," the letter continued.

Nominee Lockridge told The Dallas News he did not authorize use of his name in any telegram or letter endorsing Mauzy.

The Rev. S. M. Wright, Dallas Negro leader for Gov. John Connally, who was supporting Mauzy's primary opponent, distributed a letter by messenger after the telegrams were delivered.

The letter stated:

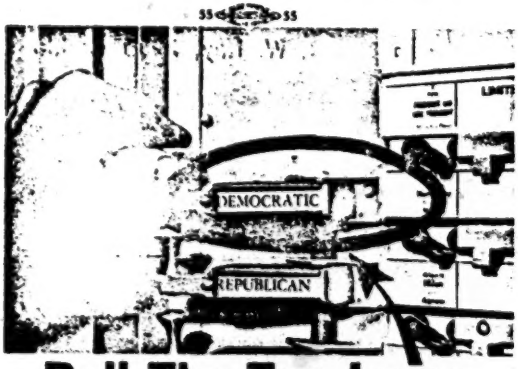
"Joseph Lockridge has not endorsed Franklin Spears (attorney general candidate) or Oscar Mauzy.

Mauzy will face Republican Frank Pounders in November for the 23d Senatorial District post.

CTIVE
EMENTS
w in price
ay Shop
LA 1-2101

Defendant's Exibit D-53

HOW TO VOTE NOVEMBER 3 TO ELECT ZAN HOLMES, OSCAR MAUZY, AND ALL OTHER DEMOCRATS.



Pull The Top Lever
The Democratic Lever

That's All You Have To Do!

See reverse side for where and when to vote.

WHERE AND WHEN TO VOTE
TUESDAY, NOV. 3

Your precinct is **308**

You vote at **J. W. Ray, 2211 Caddo**

Polls will be open 7 a.m. to 7 p.m. Tuesday, Nov. 3.

For free ride to the polls call 748-6775 or 691-0991

Remember to pull the top lever – the Democratic lever – to elect ZAN HOLMES, OSCAR MAUZY and all other Democrats!

ELECT THESE FRIENDS OF

☆☆☆☆☆☆☆☆☆☆☆☆☆

LYNDON B. JOHNSON

☆☆☆☆☆☆☆☆☆☆☆☆☆

Governor – YARBOROUGH
Lt. Governor – BARNES
Supreme Court Pl. 1 – DAVIS
Supreme Court Pl. 2 – REAVLEY
Legislature Pl. 4 – REED
Legislature Pl. 6 – RATCLIFF
Legislature Pl. 9 – STROUD
Legislature Pl. 10 – WILLIS
Legislature Pl. 14 – STEHR
Criminal Court #2 – DAVIS
County Commissioner – TYSON
County Chairman – GEE

OFFICIAL

VOTER CARD

DEMOCRATIC PRIMARY ELECTION

SATURDAY, MAY 2, 1970

Your precinct is

356

You vote at

J. N. Ervin High School
3722 Black Oak

POLLS OPEN 7 A.M. - 7 P.M.

VOTE FOR THESE CANDIDATES MAY 2

THEY'RE FOR THE PEOPLE!

U. S. Senator
RALPH W. YARBOROUGH

U. S. Congress
MIKE McKOOL

Lt. Governor
BEN BARNES

Land Commissioner
BOB ARMSTRONG

State Senator
OSCAR H. MAUZY

State Representative

Pl. 2 — DAVE MOSS
Pl. 3 — BERLAIND BRASHEAR
Pl. 4 — DICK REED
Pl. 5 — ZAN W. HOLMES JR.
Pl. 6 — JOE RATCLIFF
Pl. 9 — JIM STROUD
Pl. 10 — PAUL GOODWIN
Pl. 12 — BILL STEHR

Probate Judge
OSWIN CHRISMAN

Precinct Chairman

DANIEL THOMAS

These candidates endorsed by AFL-CIO, Progressive Voters League, Dallas United Labor Committee, Citizens for Fair Taxes

VOTE **GEORGE BUSH** VOTE

FOR UNITED STATES SENATOR

DEFENDANT'S EXHIBIT D-53

"We Can't Solve Today's Problems With Yesterday's Programs."

THIS IS THE YEAR FOR CHANGE!

THIS IS THE MAN TO DO IT!

FROM THE WALL STREET JOURNAL:

Gov. Holton's activities have almost certainly cost him some support among the state's staunchest conservatives, but have probably enlarged the rest of the peculiar coalition that helped elect him last fall. This included more moderate conservatives, independent-leaning Federal workers and other suburbanites seeking a more activist state government, AFL-CIO chieftains, and top Negro leaders—a broad spectrum that the Holton Society, a liberal Republican group, calls as the "GOP coalition of the future" in Texas.

Some coalition elements were really out more to break the power of old-line Democrats than to elect a Republican, and profess pleasant surprise over Mr. Holton's performance to date. "He's accomplished more in nine months than all his predecessors lumped together," says NAACP executive secretary Lester Banks. "When he and his wife took their kids to those black schools, that action spoke much louder than any words."

"THE PROOF OF THE PIE IS IN THE EATING"

TWO-PARTY POLITICS IN ACTION

55% OF THE TOTAL BLACK VOTE POLLED IN VIRGINIA WENT TO HOLTON AND IT CHANGED THE STATE.

LET'S CHANGE TEXAS BY GIVING GEORGE BUSH OUR VOTE.

ONE OF ONLY 8 CONGRESSMEN THAT VOTED FOR OPEN HOUSING IN TEXAS

Vote For The MAN --Not The Party! !

Don't Vote Straight Ticket! ! !

23RD SENATORIAL DISTRICT

Dallas, Texas

RUTH JEFFERSON - ED POLK - AND OSCAR MAUZY

You can get rid of one of them (Oscar Mauzy) simply by voting Saturday. Vote for JOHN WRIGHT for State Senator.

Surely, you do not want another Yarborough in Government. You would have in Oscar Mauzy.

He conducted an extensive voter registration drive in "Selected Precincts". Your precinct was not "selected". Whom does Mauzy really want to represent. NOT YOU.

This time you have your kind of man you can vote for. JOHN WRIGHT. All you need to do is vote. Before you go to the lake, or play golf or shop, take the time to vote. You won't regret it.

Carrie E. Welch
Carrie E. Welch

Henry Grupe, Jr.
Henry Grupe, Jr.

W.L. Kleinwachter
W.L. Kleinwachter

D.A. Kimmey
D.A. Kimmey

Joe M. Carpenter
Joe M. Carpenter

Gordon Yeargan
Gordon Yeargan

PLAINTIFF'S EXHIBIT CA-143 94

MOCRATIC COMMITTEE for RESPONSIBLE GOVERNMENT

Bock 4

A REMINDER TO VOTERS:

THE DEMOCRATIC PRIMARIES ARE NOT OVER. LET US NOT WAKE UP THE MORNING AFTER THE RUNOFF ON JUNE 6, 1970, AND FIND OUT THAT FAILURE TO VOTE HAS RESULTED IN THE ELECTION OF TWO LIBERALS TO OUR STATE LEGISLATURE. DALLAS COUNTY NEEDS TO MAINTAIN ITS REPUTATION AS THE BULWARK OF CONSERVATIVE STRENGTH.

VOTE FOR:

JOHN BOYLE - Place 3 - Mr. Boyle resigned his position as City Attorney of Irving to make the Race after he was requested to run for the Legislature. His opponent is Berland Brashear, an Attorney with Offices at 3318 South Oakland. Very little is known about Mr. Brashear.

SAM COATS - Place 12 - Mr. Coats is an Attorney associated with the well respected firm of Clark, West, Keller and Clark. He resides in far North Dallas. Like Mr. Boyle, he was requested to make the race by Conservative citizens. He is a former DCRG Precinct Chairman. His opponent is Bill Stehr, who is running in South Dallas with Mr. Brashear as a team. Words cannot describe his political philosophy any better than do the enclosed copies of letter bearing his signature and the enclosure thereto.

REMEMBER: RUNOFFS ARE A SPECIALTY OF MASS BLOCK VOTING TACTICS.

CONSERVATIVES WILL LOSE IF THEY DO NOT TURN OUT AND VOTE.

CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 748-020

DO YOU WANT THIS MAN ELECTED?

October 20, 1969

Dear Friend:

We hope you'll be able to join us at this Unitarian Church Dinner. The proceeds will be used primarily for voter registration activities, mostly in predominantly Black or Latin-American neighborhoods.

Political and civic figures in the audience will be introduced, and any greetings from people not present will be read.

We're taking the liberty of sending you two (2) adult tickets (numbers) at $3.00 each. We hope you can come - or at least send us a contribution if you cannot. Please make your check out to BAWA, which is a tax-deductible affiliate of the Unitarian-Universalist Church. We'd appreciate your returning any tickets not paid for.

Thanks for your help in making more people participating members of our society.

Yours sincerely,

Bill Stahl

TICKET № [redacted]

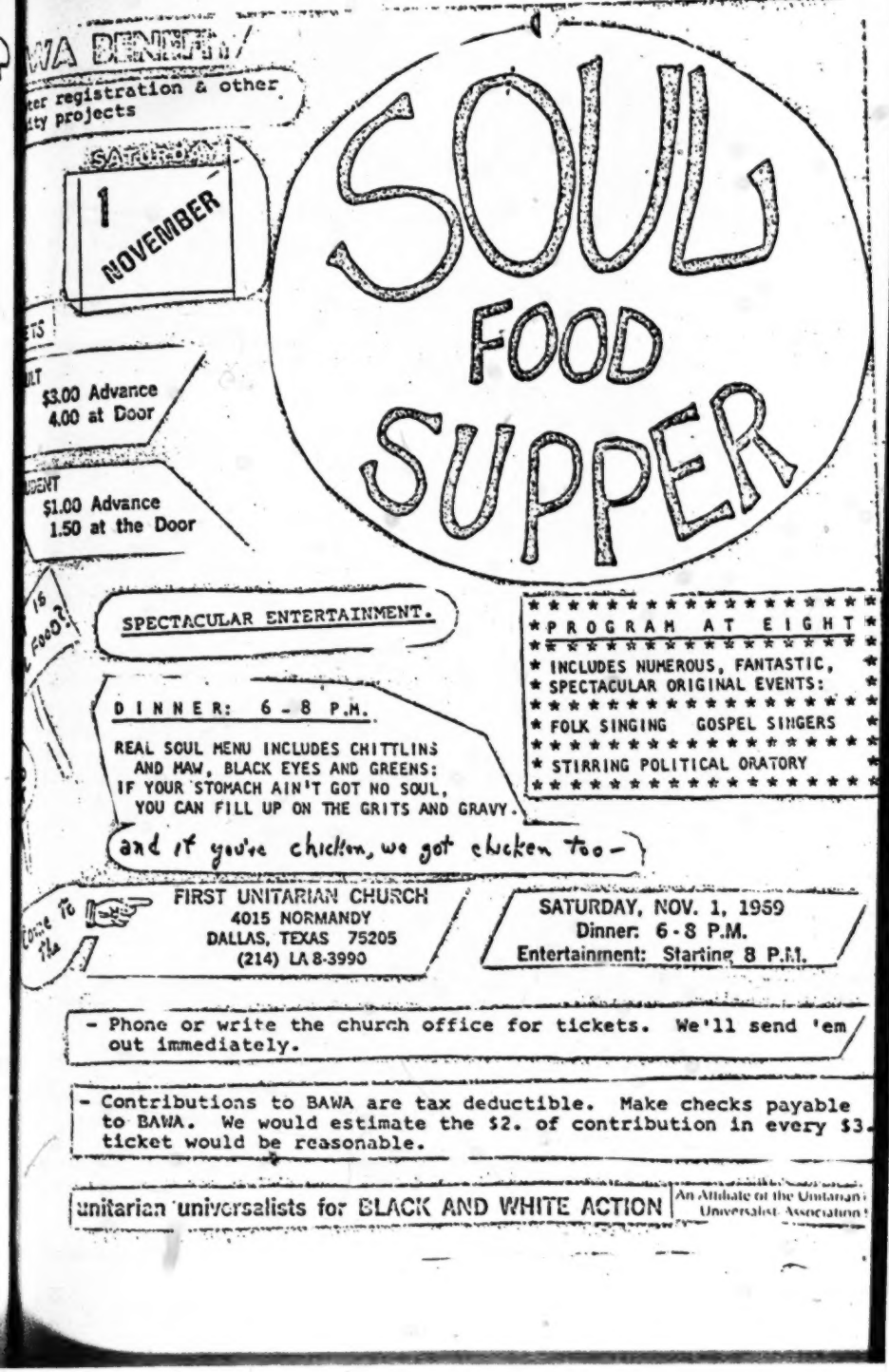
ADULT
$3.00 Advance
4.00 at Door

unitarian universalists for BLACK AND WHITE ACTION

BAWA BENEFIT
SOUL FOOD DINNER

SATURDAY, NOV. 1, 1969
Dinner: 6 - 8 P.M.
Entertainment: Starting 8 P.M.
FIRST UNITARIAN CHURCH
4015 NORMANDY
DALLAS, TEXAS 75205
(214) LA 8-3990

STUDENT
$1.00 Advance
1.50 at the Door


WA BENEFIT
ter registration & other
ity projects
SATURDAY
1
NOVEMBER
TS !
LT
$3.00 Advance
4.00 at Door
UDENT
$1.00 Advance
1.50 at the Door
SOUL
FOOD
SUPPER
SPECTACULAR ENTERTAINMENT.
DINNER: 6 - 8 P.M.
REAL SOUL MENU INCLUDES CHITTLINS
AND MAW, BLACK EYES AND GREENS:
IF YOUR STOMACH AIN'T GOT NO SOUL,
YOU CAN FILL UP ON THE GRITS AND GRAVY.
and if you're chicken, we got chicken too -
PROGRAM AT EIGHT
INCLUDES NUMEROUS, FANTASTIC,
SPECTACULAR ORIGINAL EVENTS:
FOLK SINGING GOSPEL SINGERS
STIRRING POLITICAL ORATORY
Come To The
FIRST UNITARIAN CHURCH
4015 NORMANDY
DALLAS, TEXAS 75205
(214) LA 8-3990
SATURDAY, NOV. 1, 1959
Dinner: 6-8 P.M.
Entertainment: Starting 8 P.M.
- Phone or write the church office for tickets. We'll send 'em out immediately.
- Contributions to BAWA are tax deductible. Make checks payable to BAWA. We would estimate the $2. of contribution in every $3. ticket would be reasonable.
unitarian universalists for BLACK AND WHITE ACTION
An Affiliate of the Unitarian Universalist Association

Bock 3

DEMOCRATIC CO. MITTEE for RESPON IBLE GOVERNME

December 23, 1969

Ben Atwell
Jack Blanton
Bill Braecklein
Sam Coats
Joe Golman
Joe Hawn
Zan W. Holmes, Jr.
W. B. (Bernie) Landress
Guy Lewis
Bob Lynch
Griffith Moore
Dick McKissack
Fred Orr
Chris Semos
James W. Stroud

Dear Mr.

The D. C. R. G. is a precinct organization of Dallas County citizens interested in promoting good government through responsible and effective representation. Our membership is currently several thousand and growing. Over 200 of the 293 Democratic Party Precinct Chairmen are among our members and constitute a broad base for precinct work.

With a view to best possible representation in State Government, we have conducted a study of potential candidates for the Legislature in the 1970 Democratic Primary. Your name is among those most favorably received. We offer every encouragement to you in the event you find it possible to serve our community in this worthwhile capacity. The D. C. R. G. will, should you file as a candidate in the Democratic Primary, exert extraordinary effort in the Precincts to insure your nomination in May and your election in November.

Thank you for your interest in serving Dallas County.

Yours very truly,

The Board of Directors

Bill Brewer
L. H. Brown
Joe Carpenter
Wm. H. Clark, III
Manuel De Busk
H. F. Dodson
Bill Dowdy
Glenn Dunn
Dr. Emerson Emory
L. R. "Bob" Gibson
Lee Halford
S. J. Hay, Sr.
Jack Henson
Johnny James
Ennis Killingsworth
Roy Orr
Joe Rich
Charles Simons
Forrest Smith
Robert W. Smith
Dick Stroman
Conway Thetford
Jack Thompson
Paul Underkofler
George Wilhite
Lonnie Wilson
Ernest E. Wright, Jr.

3727 CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 74

Block 5

r Neighbor:

Thank you for voting in the Democratic Primary May 2, 1970. We appreciate your effort and time in ing for the candidate of your choice.

However, our work is not complete inasmuch as Democratic Primary run off is Saturday, June 6, 1970.

I am enclosing herein litature which we believe arly indicates the political philosophy of candidates r and Breashear. A strong campaign is being run in liberal areas of Dallas to get out the vote on Saturday, 6th.

We and our neighbors must vote if we want our idates, Coats and Boyle, to prevail.

PLEASE VOTE AND GET YOUR NEIGHBOR TO VOTE FOR:

SAM COATS
and
JOHN BOYLE

Sincerely yours,

Dan D. Webster Jr.
Former Democratic Precinct Chairma

Duffield Smith Jr
Democratic Precinct Chairman

DEMOCRATIC COMMITTEE for RESPONSIBLE GOVERNMENT

2727 CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 748-0207

WHICH PAIR DO YOU WANT TO REPRESENT YOU IN AUSTIN

THIS

Below is a copy of a poster that is being displayed only in Block Voting Precincts in South Dallas. Obviously Ultra-Liberals Brashear and Stehr hope to ride in together on a massive Block Vote in those Precincts that Ralph Yarborough carried.

OR THIS

Below are pictures of the two candidates who are endorsed by the Dallas County Committee for Responsible Government, the Dallas Time Herald and the Dallas News.

PLACE 3 - JOHN BOYLE

PLACE 12 - SAM COATS

ELECTION DAY IS SATURDAY, JUNE 6 - IT IS IMPORTANT - TELL YOUR FRIENDS - GALL THEM ON SATURDAY.

80

The State of Texas
Secretary of State

I, BOB BULLOCK, Secretary of State of the State of Texas DO HEREBY CERTIFY that the attached is a true and correct copy of correspondence received from S. M. WRIGHT dated January 10, 1969.

PLAINTIFF'S EXHIBIT
CA-11-
95

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

6th day of January, A. D. 19 71.

Secretary of State

01-172

TRINITY RIVER AUTHORITY OF TEXAS

GENERAL OFFICE • SUITE 304 ARLINGTON BANK AND TRUST BUILDING • ARLINGTON, TEXAS 76010

TELEPHONES: (AREA CODE 817) 277-8131 • (AREA CODE 214) 284-4836

P. H. CAUTHAN, JR.
PRESIDENT

CHARLES W. FISHER, JR.
VICE-PRESIDENT

BEN H. CARPENTER
CHAIRMAN
EXECUTIVE COMMITTEE

DAVID H. BRUNE
GENERAL MANAGER

GEORGE D. JANNING
SEC'Y-TREASURER

January 10, 1969

The Honorable John Connally, Governor
The State of Texas
Capitol Building
Austin, Texas 78701

The Honorable P. H. Cauthan, Jr., President
Board of Directors
Trinity River Authority of Texas
Post Office Box 506
Trinity, Texas 75862

Gentlemen:

On July 19, 1967 Governor John Connally appointed me to serve as an Area-at-Large Director of the Trinity River Authority of Texas, with term expiring in March, 1973. I qualified in office and have served since then.

I want you to know that I have enjoyed serving on the Authority's Board and have great regard for the other members and the great program being accomplished with such dedication.

Because of the problems concerning my confirmation by the Senate of the State of Texas I feel that I should and do hereby resign from the Board of Directors of the Trinity River Authority effective this date. I appreciate the Governor's confidence in me and the good fellowship of the members of the Authority's Board.

Respectfully submitted,

S. M. Wright

S. M. WRIGHT

ALLEN MELTON
ATTORNEY AND COUNSELOR
1512 COMMERCE STREET
SUITE 1115
DALLAS, TEXAS 75201

September 29, 1971

Honorable Crawford Martin
Attorney General
Supreme Court Bldg. B
Room B-709
Austin, Texas

Dear Crawford:

There is considerable agitation on the part of Oscar Mauzy-Mike McKool, et al, to redistrict Dallas County into single member districts. This is, as you will recognize, a calculated effort on the part of the liberals to get more liberal Democrats elected to the Legislature from Dallas County. The next in line to gain are the Republicans. Conservative Democrats will de-escalate to zero under this plan. There is no good reasoning in the support of single member districts. I would much rather have eighteen members in the Legislature than one who, in all probability, would really not represent me in Dallas County.

Since Dallas County is now entitled to four Senators, there is nothing intrinsically wrong with having the Senators elected at large. In that manner we could get four reasonably minded Democrats, in my judgment.

I hope you will stand pat for Dallas County to have a delagation, all members of the House elected at large.

Very truly yours,

Allen Melton

AM:bc

DEMOCRATIC PARTY OF DALLAS COUNTY 1002 DALLAS FEDERAL SAVINGS BLDG. DALLAS, TEXAS 75
EARL LUNA, County Chairman
214 74

September 24, 1971

Attorney General Crawford Martin
Legislative Redistricting Committee
Capitol Building
Austin, Texas 78711

Dear Attorney General Martin:

Enclosed please find a copy of the Resolution in favor of multi-member legislative districts passed by the Dallas County Democratic Executive Committee on September 22, 1971.

With kindest personal regards, I remain

Yours very truly,

Earl Luna

Earl Luna

EL bj
Encl.

RESOLUTION

WHEREAS, a suit has been filed in the Supreme Court of Texas asking that the Legislative Redistricting Board be required to redistrict the House of Representatives of the State of Texas into 150 single member districts; and

WHEREAS, such action, if granted, would not be to the best interest of the people of Dallas County; and

WHEREAS, such single member districts would create ward politics; and

WHEREAS Dallas County is a political subdivision with a community of interests in many areas which should be preserved and the preservation of such political subdivision as a multi-member legislative district has repeatedly and recently been approved by the United States Supreme Court; and

WHEREAS, there is always a winner and a loser in any political race, whether multi-member districts or single member districts, and in either case the loser does not wind up with a person of his choice representing him but such is our political system in a Democratic Society; and

WHEREAS, while the multi-member House Plan in Dallas County represents all ethnic, economic, social, religious and political groups, the single member Senate Plan in Dallas County does not do so in that only Liberal Democrats and Republicans are represented in the single member Senate Plan, thereby leaving the middle of the

roaders, conservatives and other ethnic groups who constitute a majority of the people in Dallas County with no representation by like minded Senators; and

WHEREAS, a multi-member district is the most effective representation for Dallas County;

NOW, THEREFORE, BE IT RESOLVED that the Democratic Executive Committee does hereby endorse the multi-member district plan for the Texas House of Representatives and supports and adopts the brief filed in the Supreme Court of Texas by George Bock and Earl Luna which opposes single member districts and supports the multi-member district concept.

BE IT FURTHER RESOLVED that a copy of this Resolution be sent to all members of the Legislative Redistricting Board and the Governor of the State of Texas so they may be apprised of the grass roots thinking of the Precinct Chairmen instead of the thinking of the self-appointed spokesmen who have attempted to lead the public to believe otherwise.

PASSED AND ADOPTED this 22nd day of September, A. D. 1971.

Earl Luna

EARL LUNA, Chairman, Dallas County
Democratic Executive Committee

George Bock

GEORGE BOCK, Secretary, Dallas County
Democratic Executive Committee

ALLEN MELTON
ATTORNEY AND COUNSELOR
1512 COMMERCE STREET
SUITE 1115
DALLAS, TEXAS 75201

October 4, 1971

Crawford C. Martin
Attorney General of Texas
Supreme Court Building
Austin, Texas 78711

Dear Crawford:

Thanks to you for your letter of September 30th.

My letter of September 29th was intended as a direct request to you for you to hold to the multi-member district concept. Conservatives cannot get elected from single member districts except in a few specific instances. Republicans will grab the more conservative districts and liberals the others.

Very truly yours,

Allen Melton

AM:bc

PHONE
OFFICE 388-424...
RES 337-3638

S R SINGLETON PRESIDENT
J P FAULKENBERRY VICE PRES.
S H STEPHENS SEC. TREAS.

M & S Construction Co.

P.O. BOX 21027 DALLAS, TEXAS 75211

October 15, 1971

Hon. Crawford Martin, Attorney General
Capital Station
Austin, Texas

Dear Sir:

I request that you use your influence to help Dallas County retain electing it's Legislators at Large.

Thank you for your assistance in this matter.

Yours very truly,

S.R. Singleton
P.O. Box 82
Cedar Hill, Texas 75401

M & S Construction Co.
P.O. BOX 21027 DALLAS, TEXAS 75211

October 15, 1971

Hon. Crawford Martin, Attorney General
Capital Station
Austin, Texas

Dear Sir:

I request that you use your influence to help Dallas County retain electing it's Legislators at Large.

Thank you for your assistance in this matter.

Yours very truly,

W. E. Williams

W. E. Williams
629 Davanshire
Richardson, Texas 75080

TELEPHONE
OFFICE 741-4348
SHOP 337-3638

S N SINGLETON PRESIDENT
J P (PAUL) ANDREWS V PRES
S H STEPHENS SEC'Y TREAS

M & S Construction Co.

P.O. BOX 21027 DALLAS, TEXAS 75211

ack

October 15, 1971

Hon. Crawford Martin, Attorney General
Capital Station
Austin, Texas

Dear Sir:

I request that you use your influence to help Dallas County retain electing it's Legislators at Large.

Thank you for your assistance in this matter.

Yours very truly,

ME

S.H. Stephens
3345 Shady Hollow Lane
Dallas, Texas 75233

Dallas, Texas
October 5, 1971.

on. Crawford Martin
ttorney General
ustin, Texas 78711

ar Sir:

s a member of the Legislative Redistricting Board you will have
great effect on the government of Texas for the next ten years.

e people of Dallas County have a great deal at stake. We are
rticularly concerned with the kind of a new constitution that
y be written by the next Legislature, if the voters authorize it.

t is vitally important that Dallas County retain the election of
s Legislators at Large. This has proved to be very advantageous.
t would also be advantageous for our Senators to be elected at
rge.

ur consideration will be greatly appreciated.

Sincerely yours,

Mrs. Lucile Orr
Precinct Chairman 3/4

cc 71

Dallas, Texas
October 5, 1971.

Hon. Gus Mutscher, Speaker
House of Representatives
Austin, Texas 78711

Dear Sir:

As a member of the Legislative Redistricting Board you will have a great effect on the government of Texas for the next ten years.

The people of Dallas County have a great deal at stake. We are particularly concerned with the kind of a new constitution that may be written by the next Legislature, if the voters authorize it.

It is vitally important that Dallas County retain the election of its Legislators at Large. This has proved to be very advantageous. It would also be advantageous for our Senators to be elected at Large.

Your consideration will be greatly appreciated.

Sincerely yours,

Mrs Minnie Harrison

ack

Dallas, Texas
October 5, 1971.

Hon. Crawford Martin
Attorney General
Austin, Texas 78711

Dear Sir:

As a member of the Legislative Redistricting Board you will have a great effect on the government of Texas for the next ten years.

The people of Dallas County have a great deal at stake. We are particularly concerned with the kind of a new constitution that may be written by the next Legislature, if the voters authorize it.

It is vitally important that Dallas County retain the election of its Legislators at Large. This has proved to be very advantageous. It would also be advantageous for our Senators to be elected at Large.

Your consideration will be greatly appreciated.

Sincerely yours,

Mrs Kate Levy

ark

Dallas, Texas
October 5, 1971.

Hon. Crawford Martin
Attorney General
Austin, Texas 78711

Dear Sir:

As a member of the Legislative Redistricting Board you will have a great effect on the government of Texas for the next ten years.

The people of Dallas County have a great deal at stake. We are particularly concerned with the kind of a new constitution that may be written by the next Legislature, if the voters authorize it.

It is vitally important that Dallas County retain the election of its Legislators at Large. This has proved to be very advantageous. It would also be advantageous for our Senators to be elected at Large.

Your consideration will be greatly appreciated.

Sincerely yours,

NC E. Groh

CARROLL L. BACCUS
9500 FIRST NATIONAL BANK BUILDING
DALLAS, TEXAS 75202

October 12, 1971

Hon. Crawford Martin, Attorney General
Capital Station
Austin, Texas

Dear Sir:

As a Democratic Precinct Chairman of Precinct #109, Dallas County, Texas, I urge you as a member of the Legislative Redistricting Board to retain the election of legislators at large rather than having single member districts. Certainly by having legislators elected at large the whole county and the metropolitan area will benefit from having legislators who are interested in their community as a whole rather than a small section of the county and city. Therefore, I urge you to let Dallas County retain electing its legislators at large. Furthermore, it would increase our government structure if we were entitled to vote on our state senators at large. Your consideration in this matter will certainly be appreciated.

Sincerely,

Carroll L. Baccus

Carroll L. Baccus

CLB:vcc

JOHN W. WASSELL, A I A
ARCHITECT
301 MERCANTILE SECURITIES BUILDING
DALLAS, TEXAS 75201
214 741-4863

redist
ack

October 14, 1971

The Honorable Crawford Martin
Attorney General of the State of Texas
Capitol Station
Austin, Texas 78711

Dear Sir:

It is very important to the future of Dallas County that our representatives to the Texas Legislature be elected at large and thus continue the present system which promotes the best interests of the entire area as a whole.

The single member district plan fragments the county and lends itself to the development of a ward politics system, which has historically led to a very undesirable political climate.

I urge you to redistrict not only Dallas County but also other metropolitan areas on the basis of multi-member districts.

Sincerely yours,

John W. Wassell

John W. Wassell
JWW:DD

CY BLACKBURN INSURANCE AGENCY
Complete Line of Insurance
227 PLEASANT GROVE SHOPPING CENTER
P. O. BOX 17038
DALLAS, TEXAS 75217
EX 1-4171

October 8, 1971

Redistricting Board
Capitol Building
Austin, Texas

ATTN: Honorable Crawford Martin, Chairman

Gentlemen:

Dallas County has elected their ~~up~~ Representatives under the "At Large" System since the beginning of Dallas and we have prospered under this method. I urgently request that no changes be made from the system.

Yours very truly,

C. O. Blackburn

COB:dw

5025 Milam Street

Dallas, Texas

Hon. Crawford Martin

Attorney General

Capitol Station

Austin, Texas

Dear Sir:

I am asking you as member of the Legislative Redistricting Board that Dallas County retain electing it's Legislators at large.

Mrs Alvis G. Carter

Mrs. Alvis G. Carter
Precinct Chairman
Precinct No. 250

October 15, 1971

ack

Honorable Crawford Martin, Attorney General
Capitol Station
Austin, Texas 78701

Dear Sir:

As a member of the Legislative Redistricting Committee, I ask that you retain our system of selecting members of the Texas House on an "at large" basis. I believe this more nearly reflects the total wishes of the people who are trying to promote the general good of the more populous areas.

Electing State Senators on an "at large" basis is a good idea, also.

Thank you for your consideration.

Yours very truly,

nc John V. Goolsby

John V. Goolsby
P. O. Box 3000
Dallas, Texas 75221

JVG/ep

R. BEARD, Mayor Pro-Tem
GALLOWAY, Councilman
"CHIP" MacLELLAND, Councilman

DR. DON H. COOK, Councilman
BILL J. SMITH, Councilman
JERRY F. SHARP, Councilman

CITY OF MESQUITE

GEORGE BOYCE – MAYOR

October 7, 1971

Hon. Crawford Martin, Attorney General
Capitol Station
Austin, Texas

Dear Mr. Martin:

Please put me on record as favoring our present system of electing Dallas County Representatives at large.

Past records will bear me out that this system keeps our Representatives from catering to special interest groups in relatively small geographical areas and keeps them sensitive to the needs of the entire metropolitan area.

I might also add that I feel that more cooperation between the cities could be attained if our Senators were also elected at large.

Thank you for your consideration.

Sincerely yours,

C. G. "Chip" MacLelland
Councilman

CGM:pd

October 8, 1971

Honorable Crawford Martin
Attorney General, State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Martin:

As a resident of Dallas County since 1927 and as a long-time member of the Democratic Party, I strongly urge that you, as a member of the Legislative Redistricting Board, resist any pressures to divide Dallas County up into single-member legislative districts. I have followed this matter rather closely, and I am firmly convinced that the cause of good government would not be served by single-member districts at this time.

Your careful and conscientious consideration of this matter will be greatly appreciated.

Sincerely yours,

R. L. Gleaves

R.L. Gleaves
1210 Oak Cliff Bank Tower
Dallas, Texas 75208

THE
SOUTHLAND
CORPORATION

October 6, 1971

Honorable Crawford Martin
Attorney General
Capitol Station
Austin, Texas

Dear Sir:

Knowing that you are a member of the Legislative Re-districting Board, I would like to urge that you and the entire Board consider the retaining of electing Representatives for the Legislator on an at Large basis.

I feel that this more fully represents the people of Dallas in its entirety, rather than breaking it up into small sections. I do hope that you will encourage your fellow board members to do the same. Thanks ever so much for all of your considerations.

Very truly yours,

Jere W. Thompson

JWT:ho

V. E. Emory, Inc.
MASONRY CONTRACTOR
P.O. Box 38299 Phone EM 8-3280
Dallas, Texas 75238

October 5, 1971

Capitol Station
Austin, Texas

Attn: Attorney General

Honorable Crawford Martin:

I sincerely hope that Dallas County can retain electing our legislators at large. It would be a shame to see a county so well represented be carved up into legislative districts that would in essence, lose its over all effectiveness as a segment of our governing body.

The same would hold true of our senators being elected at large. It is evident the majority of the people in Dallas County would continue to have good representation with all legislators and senators being elected at large.

I am sure you will evaluate this matter carefully and bring it to a favorable conclusion, your efforts in behalf of the people of Dallas County, as well as our great State of Texas, are greatly appreciated.

Respectfully,

V. E. Emory

VEE:pd

YARBROUGH CONSTRUCTION CO.
CONTRACTORS AND ENGINEERS
4425 GREENVILLE AVENUE
DALLAS, TEXAS 75206

October 4, 1971

Hon. Crawford Martin, Attorney General
Capitol Station
Austin, Texas

Re: Legislative Redistricting

Dear Mr. Martin:

It is my understanding that the Legislative Redistricting Board is to meet this month to consider the matter of how Dallas County representatives are elected.

I would like to take this means of expressing to you my preference in this matter and that is, that we retain the present method of electing "at large" representatives in our County.

We will be appreciative of your consideration of our viewpoint.

Sincerely yours,

David B. Yarbrough

DBY:vw

Dallas, Texas 75205
October 7, 1971

Dear Mr. Martin:

Thank you for serving our state as one of our elected officials.

We address you as such and as a member of the redistricting commission.

First, sir, we register with you our desire for multimember districts, not single-member.

Second, we are NOT in favor of gerrymandering to accomplish political ends.

We do trust, sir, that your attitudes and actions in state government, and personally, will merit our affirmatives in the future.

Very truly yours,

Mr. and Mrs. Thomas D. Finney

JAS. W. PORTER
P.O. BOX 47127
DALLAS, TEXAS 75247

October 4, 1971

The Honorable Crawford Martin
Attorney General
Capitol Station
Austin, Texas

Dear Mr. Martin:

I am asking that you as a member of the Legislative Redistricting Board permit Dallas County to continue to elect its Legislators at Large as opposed to dividing Dallas County into single member Legislative Districts.

For a large metropolitan area such as Dallas County to have sound economic growth and a healthy political climate, it is necessary that the elected officials have a unity of purpose. To create many Legislative Districts in such an area can create division, distrust, and disunity.

Your assistance in permitting Dallas County to elect its Legislators at Large is earnestly solicited.

Sincerely,

Jas. W. Porter

WALTER P. MORGAN, JR.
3817 Irving Boulevard
Dallas, Texas 75247

October 4, 1971

Dear Crawford:

I ask you, as a member of the Legislative Redistricting Board, to vote for and to use your influence to allow Dallas County to retain its Legislators at Large.

In the years past, Dallas County has succeeded in sending to the State Legislature a delegation composed in a great majority of stable and responsible folks who have done credit to our state. The Dallas Delegations have been a great factor in keeping our state a fine one to live in and a fine one to do business in.

I also suggest that our Dallas Senators would better represent the majority of the thinking of the Dallas people if they too were elected at large.

Best personal regards.

Sincerely,

W. P. Morgan, Jr.

The Honorable Crawford Martin
Attorney General
Capital Station
Austin, Texas

ack

October 5, 1971

Honorable Crawford Martin
Attorney General of the State of Texas
Capitol Station
Austin, Texas

Dear Mr. Martin:

Please strongly consider defeating the single member district concept for Dallas County. I honestly believe multi-member districts are for the best representation of all the people.

Sincerely,

NC Mrs. R. S. Lewis Jr
18210 Cromwell Dr
Dallas 75229

JOHN LAWRENCE
P. O. Box 718
DALLAS, TEXAS 75221

October 4, 1971

Honorable Crawford Martin
Attorney General of the State of Texas
Capitol Station
Austin, Texas

Dear Mr. Martin:

I understand there is a movement afoot to carve Dallas County into single member legislative districts. To me, this would be a mistake, and it is my hope you let Dallas County continue to retain electing its legislators at large.

I hope you agree.

Sincerely,

John Lawrence

Mrs. Joe A. Wilson
14921 Green Valley Drive
Mesquite, Texas 75149

Honorable Crawford Martin
Attorney General of Texas
Supreme Court Building
Austin, Texas

Re: House Redistricting

Dear Mr. Martin:

The pending redistricting of the Legislative Districts of Texas is of great concern to me. Please allow Dallas County to continue to be represented by multi-member districts, as I am convinced this type of representation is the best for everyone in each particular district.

Thank you for your consideration.

Yours very truly,

Sunny Wilson

PRESBYTERIAN HOSPITAL OF DALLAS 8200 WALNUT HILL LANE / DALLAS, TEXAS 75231 / (214) 369-4111

Rod Bell / Administrator

redid.

October 5, 1971

The Honorable Crawford Martin
Attorney General
Capitol Station
Austin, Texas

Dear Crawford:

With your reapportionment coming up and the very key position you occupy in this respect, I think it fair and appropriate to give you an honest opinion.

Ninety-nine per cent of your friends in the Dallas area, the people who supported you in the past and will again in the future, believe that our representatives are best selected on a county-wide basis. The larger the units, the greater the democratic action process is.

We've gone a long way to get away from pockets, cells, and precinct dominations, and I hope you and your group will continue to give the Dallas citizens the privilege of county-wide selection.

Warmest personal regards.

Cordially yours,

Rod Bell

Rod Bell
Administrator

RMB:DR

J. M. HAGGAR, JR.
6113 LEMMON AVENUE
DALLAS, TEXAS

October 5, 1971

Dear Atty. Gen. Martin:

You now have under consideration changing the manner in which legislators are elected in Dallas county. I feel the method of giving all the people an opportunity to elect the legislators at large gives everyone in the city a voice in this election and at the same time gives proper representation.

I hope you will give consideration to the above and maintain the present method of electing our legislators at large.

Very truly yours,

J. M. Haggar, Jr.

The Honorable Crawford Martin
Attorney General
Capitol Station
Austin, Texas

JAMES L. SEWELL
1316 FIDELITY UNION LIFE BUILDING
DALLAS, TEXAS 75201

October 6, 1971

The Honorable Crawford Martin
Attorney General of Texas
Capitol Station
Austin, Texas

Dear Mr. Attorney General:

For a number of years Dallas County as a single Legislative District has elected its legislators on an at large basis.

I urgently request you to support continuance of this county-wide Dallas Legislative District.

Yours sincerely,

J. L. Sewell.

JLS:M

Oct 5, 1971

Hon. Crawford Martin
Capitol Station
Austin, Texas

Dear Sir

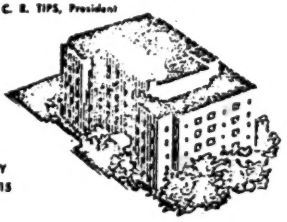
During deliberations of the Redistricting Board the writer is hopeful you will support Dallas County to retain electing its Legislators at large.

I believe this would best serve the interests of all the voters in Dallas County rather than having single Member districts.

Sincerely

Mrs. W. H. Ruth

THE Ambassador HOTEL
C. R. TIPS, President



1312 SOUTH ERVAY
DALLAS, TEXAS 75215
RI 2-9003

October 5, 1971.

Hon. Crawford Martin
Attorney General
Austin, Texas 78711

Dear Sir:

As a member of the Legislative Redistricting Board you will have a great effect on the government of Texas for the next ten years.

The people of Dallas County have a great deal at stake. We are particularly concerned with the kind of a new constitution that may be written by the next Legislature, if the voters authorize it. It is vitally important that Dallas County retain the election of its legislators at Large. This has proved to be very advantageous. It would also be advantageous for our Senators to be elected at Large.

Your consideration will be greatly appreciated.

Sincerely yours,

Charles R. Tips

Charles R. Tips.

CRT:gs

3143 Grayson Drive
Dallas, Texas 75224
October 1, 1971

The Honorable Crawford Martin
Capitol Station
Austin, Texas

Dear Mr. Martin:

My husband and I are very much against single member districts for Dallas County. At Large representation gives Dallas County a more or less unified voice in Austin. Single member districts would cause serious disunification among our Legislators.

One single Legislator cannot adequately represent the population, businesses, industries and political climate of a district. We desperately need more than one voice representing one slice of the pie. Dallas needs multi member district representation. We do not need our County split!

Please give this matter serious consideration.

Very sincerely yours,

Mrs. Ralph E. Robinson

AVERY MAYS CONSTRUCTION CO.
P. O. BOX 35612
DALLAS, TEXAS 75235

AVERY MAYS
CHAIRMAN OF THE BOARD

October 5, 1971

The Honorable Crawford Martin
Attorney General
Capitol Station
Austin, Texas 78701

Dear General Martin:

We in Dallas County have had our State Representatives elected at Large for many years. In my judgment, this plan of representation has been most beneficial to our City and County in providing good government serving the needs of the majority of our citizens.

I am personally interested in retaining the at Large multiple county representation. Please continue the same plan if it is possible to do so in compliance with existing laws and regulations.

Thanks for your fine public service; particularly, in this important consideration now before you.

Sincerely,

Avery Mays

AM:cl

PATTERSON & DEARIEN
ATTORNEYS AND COUNSELORS AT LAW
REPUBLIC BANK TOWER, SUITE 2016
DALLAS, TEXAS 75201

TELEPHONE 744-2171

October 4, 1971

Honorable Crawford Martin, Attorney General

Honorable Ben Barnes, Lt. Governor

Honorable Bob Armstrong, Land Commissioner

Honorable Robert Calvert, Comptroller

Honorable Gus Mutscher, Speaker - House of Representatives

State Capitol Building, Capitol Station
Austin, Texas

Re: Senate and Legislative Re-districting Board

Gentlemen:

We strongly urge that Dallas County retain electing its Legislators at large and suggest to you that the only equitable way would be for Dallas County to elect our Senators in the same manner.

Sincerely yours,

W. Drake Patterson

WDP:cs

WILLIAM H. ESTES

Real Estate • Investments

126 ESTES LAKES SHOPPING CENTER • DALLAS, TEXAS 75217 • PHONE EVI-4383

October 5, 1971

Hon. Crawford Martin
Attorney General
Capitol Station
Austin, Texas

Dear Sir:

It is my honest opinion that the Citizens of Dallas County would be better served by continuing to have its Legislators elected at large, rather than single member districts.

In fact, I think it would be better to have the Senators also elected at large. I, for one, would appreciate you keeping this in mind when you set down to consider Redistricting Dallas County.

Wm. H. Estes
Precinct Chairman
Precinct #331, Dallas, County

MISSOURI PACIFIC RAILROAD COMPANY

900 FIDELITY UNION TOWER
1507 PACIFIC AVE., DALLAS, TEXAS 75201
TEL. AREA CODE 214 748-8181

MARK H. HENNELLY
VICE PRESIDENT AND GENERAL COUNSEL

WM. R. McDOWELL
GENERAL COUNSEL—SOUTHERN LINES
WM. C. DOWDY, JR.
GENERAL ATTORNEY
TOM L. FARMER
GENERAL ATTORNEY

J. P. SIMPSON
GENERAL ATTORNEY
THOMAS A. LOOSE
ASSISTANT GENERAL ATTORNEY
REX WATSON
ATTORNEY

October 6, 1971

Hon. Crawford Martin
Attorney General
Capitol Building
Austin, Texas

Dear General:

As a Precinct Chairman and a conservative Democrat, I urge you to retain our multi-member Legislative District in Dallas County. As a matter of fact, it would help us "middle-of-the-roaders" if our Senators were also required to run at large.

As you know, we have a broad spectrum of representation in our legislative delegation - a Black, a Jew, a Greek, a Republican, etc. Unfortunately on the Senate side, under our single-member district representation, we have two Liberals and one Republican with the vast majority of conservative middle-of-the-roaders (who also constitute a majority on our County Democratic Executive Committee) being totally unrepresented.

I sincerely ask that you not disinfranchise us by carving Dallas into single-member districts.

Sincerely yours,

Wm. C. Dowdy, Jr.

WCD/sr

H & H BUILDERS redistricting

P. O. BOX 64650 TELEPHONE 824-8562
DALLAS, TEXAS 75206

September 30, 1971

The Honorable Crawford Martin
Attorney General of Texas
Capitol Station
Austin, Texas

Dear Sir:

For the overall good of Dallas County we request that we be allowed to elect our legislators and senators At Large.

We have had outstanding representatives, let's keep them.

Very truly yours,

C. V. Hagler

C. V. Hagler

CVH/jg

redistricting

H & H BUILDERS

P. O. BOX 64650 TELEPHONE 824-8562
DALLAS, TEXAS 75206

September 30, 1971

The Honorable Crawford Martin
Attorney General of Texas
Capitol Station
Austin, Texas

Dear Sir:

Dallas County has had good representation. Please retain election of our legislators at large.

Very truly yours,

Robert L. McKee

Robert L. McKee

NC

RLM/ls

CCM redistricting

ALVIN R. HAGLER
2900 MCFARLIN
DALLAS, TEXAS 75205

September 30, 1971

The Honorable Crawford Martin
Attorney General of Texas
Capitol Station
Austin, Texas

Dear Sir:

We request that you permit Dallas County to retain election of it's Legislators at Large. Also request that our senators be elected at large.

We believe that this will give Dallas County the best representation of any system.

Thanks for your consideration.

Very truly yours,

Al Hagler

Alvin R. Hagler
Democrat Chairman
Precinct 174

ARH/ls

HAGLER
Construction Company
GENERAL CONTRACTOR
4111 N. CENTRAL EXPRESSWAY • DALLAS, TEXAS 75204 • LAkeside 6-8951

Redistricting

September 30, 1971

The Honorable Crawford Martin
Attorney General of Texas
Capitol Station
Austin, Texas

Dear Sir:

At Large election of our legislators in Dallas County is a must to keep the most qualified men. Request you retain At large election for Dallas County.

Very truly yours,

Robert L. Saunders

Robert L. Saunders RLS

RLS/ld

STANFIELD AND GREENBERG
ATTORNEYS AND COUNSELORS AT LAW
1105 MERCANTILE SECURITIES BUILDING
DALLAS, TEXAS 75201
AREA CODE 214
748-8348

RICHARD L. STANFIELD

ROBERT M. GREENBERG
JOHN CURTIS WHITE

September 30, 1971

Honorable Crawford Martin
Attorney General of Texas
Supreme Court Building
Austin, Texas

Re: House Redistricting

Dear Mr. Martin:

As a member of the Legislative Redistricting Commission, certainly the future of House representation as we in Dallas County have known it is now in your hands. I sincerely believe that multi-member districts offer the best possible representation for the people of Dallas County. Every individual, element, or group of our society within each multi-member district has had, and can expect to have if multi-member districts are retained, a responsive Representative, and therefore an active voice in Texas Government.

Fair and adequate representation is what most concerns the citizens of Dallas County at this time. I will appreciate your giving every consideration to the retention of the multi-member district concept for Dallas County.

Respectfully,

John Curtis White

JCW/sw

NC

126

OTIS ELEVATOR COMPANY

OTIS BUILDING
1822 YOUNG STREET
DALLAS, TEXAS 75221

October 1, 1971

Hon. Crawford Martin
Attorney General
Capitol Station
Austin, Texas

Subject: Legislative Re-districting

Dear Mr. Martin:

Regarding the above subject, may I urge you to vote to retain Dallas County electing it's Legislators at Large.

Very truly yours,

OTIS ELEVATOR COMPANY

W. O. McCallum
Regional Sales Manager

WOM:ih

nc

127

THE ATTORNEY GENERAL OF TEXAS

CRAWFORD C. MARTIN
ATTORNEY GENERAL

AUSTIN, TEXAS 78711

October 4, 1971

Mr. Sam O. Harris, Jr., Chairman
Democratic Precinct No. 165
P. O. Box 10161
Dallas, Texas 75207

Dear Mr. Harris:

Thank you for your letter of October 1st concerning legislative redistricting. As Chairman of the Legislative Redistricting Board, I can assure you that your request will be brought to the attention of the Board and will be given every consideration before a vote is taken.

I would like to explain that the Board is operating within very narrow limits. The Supreme Court of Texas has ordered that no county lines can be crossed unless it is absolutely necessary to do so, and the Supreme Court of the United States says that the one-man one-vote principle must apply in order to protect the minority groups. At this time I am not certain what the Board can do, but we will make every effort to comply with the law.

I appreciate your taking the time to give me the benefit of your views in this connection. With kind regards, I am

Sincerely,

Crawford C. Martin

CCM/rg

S. O. HARRIS CORPORATION construction services
P. O. BOX 10161 • DALLAS, TEXAS 75207 • ~~PHONE 357-1727~~

NEW LOCATION
509 MEADOWS BLDG. DALLAS
PHONE 691-8157

1 October 1971

Hon. Crawford Martin, Attorney General
Capitol Station
Austin, Texas

RE: Legislative Re-districting

Dear Honorable Martin,

The people of Precinct 165 Dallas County are much concerned with the proposed legislation of re-districting. We feel that Dallas County should retain electing it's Legislators at Large.

We would appreciate your help in this matter.

Sincerly Yours,

Sam O. Harris Jr

Sam O. Harris, Jr.
Dem. Precinct Chairman #165
Dallas County

CHARLES MAX COLE, M. D.
MEDICAL ARTS BUILDING
DALLAS

October 1, 1971

Honorable Crawford Martin
Attorney General
State of Texas
State Capitol Building
Austin, Texas 78701

Re: Legislative
Re-districting

Dear Mr. Martin:

I know that you have an extremely difficult problem in redistricting the state, one that will challenge your full wisdom and experience.

I only want to say that I believe the best interests of an entire community such as we have in Dallas County is best served when our representatives are elected at large. I hope that your recommendations will retain this method of election rather than embrace the single member districts proposed by a few.

With best wishes, I am,

Sincerely yours,

Charles Max Cole

Charles Max Cole, M. D.

CMC/jw

CROSLIN
BROTHERS
GENERAL CONTRACTORS

P.O. Box 31313
Dallas, Texas 75231
214/233-6655
12045 Coit Road

October 1, 1971

Hon. Crawford Martin, Attorney General
Capitol Station, Austin, Texas

Dear Sir:

I feel, after reviewing the situation, that it is in the best interest of Dallas County for our legislators to be elected at large.

I would appreciate any assistance in this matter that you feel proper.

Also, I am grateful for the sincere efforts being put forth by our state government at this time.

Very truly yours,

W. B. Croslin

W. B. Croslin

WBC/ms

CROSLIN
BROTHERS
GENERAL CONTRACTORS

P.O. Box 31313
Dallas, Texas 75231
214/233-8655
13045 Coit Road

October 1, 1971

Hon. Crawford Martin, Attorney General
Capitol Station, Austin, Texas

Dear Sir:

I feel, after reviewing the situation, that it is in the best interest of Dallas County for our legislators to be elected at large.

I would appreciate any assistance in this matter that you feel proper.

Also, I am grateful for the sincere efforts being put forth by our state government at this time.

Very truly yours,

W. B. Croslin

W. B. Croslin

WBC/ms

NC

GEORGE BOCK
P. O. BOX 15728
DALLAS, TEXAS 75215

September 29, 1971

Honorable Crawford Martin, Attorney General
Capitol Station
Austin, Texas

Re: Legislative Re-Districting

Dear Sir:

At a meeting of the Democratic Executive Committee of Dallas County a few nights ago, with only two dissenting votes, the Committee approved a resolution asking that Dallas County remain a multi-member District.

Any thing else would ruin the Democratic Party of Dallas County.

The best analysis of the reasons why are contained in the Amicus Brief submitted by Earl Luna in the recent case before the Texas Supreme Court. At present, we have elected one Negro, one Greek, one Jew, several Catholics and Protestants and one Republican. No one can say that the system discriminates. On the other hand, the single member Senate Districts have elected two Liberal Democrats and one Republican; none of whom represent a consensus of the entire Dallas County population. If the County is split into separate Districts, those Conservatives who have been working within the Democratic Party of Dallas County will not be able to elect any future Conservatives to the Legislature and they know it. The Party will lose the virility of their volunteer efforts. And we will most certainly wind up with 5 or 6 Republicans.

In urban Centers, there is not a wide spectrum of occupations and interests in an area of 70,000 people as there are in rural areas and small county seats. Many people are not necessarily in favor of their next door neighbor.

Dallas County has a Hospital District, about fifteen municipalities, about fifteen School Districts, several water districts, a Junior College District, etc. We feel that these are better off under a multi-member Legislative District.

Another thing to consider is the impractibility of being able to establish new precinct lines, if the County is cut up, in time for the Tax Assessor to issue new voting registration certificates. I understand that it will be an impossibility.

Hon. Crawford Martin
Re: Legislative Re-Districting
September 29, 1971

Page 2

Multi-member districts are a bar to gerrymandering. Gross gerrymandering was the cause of the Bill that passed getting into trouble. Where it did not get into trouble, I see no reason for the Board to override what passed the last Legislature that was not declared unconstitutional by the Court.

Sincerely,

George Bock

GB/br

STANFIELD AND GREENBERG
ATTORNEYS AND COUNSELORS AT LAW
1108 MERCANTILE SECURITIES BUILDING
DALLAS, TEXAS 75201
AREA CODE 214
748-9348

RICHARD L. STANFIELD

ROBERT M. GREENBERG
JOHN CURTIS WHITE

September 30, 1971

Honorable Crawford Martin
Attorney General of Texas
Supreme Court Building
Austin, Texas

Re: Legislative Redistricting Commission - House Redistricting

Dear Mr. Martin:

In your consideration following the mandate of the Supreme Court to redistrict the House of Representatives, please give every consideration possible to leaving the House of Representatives in Dallas County as multi-member districts. It is only through multi-member districts that the people can be properly represented in the Texas House of Representatives.

History has shown that the multi-member district concept, particularly as it relates to Dallas County, has not and will not discriminate against any minority, whether political or ethnic. As you know, the present House Delegation from Dallas is made up of many minority groups and this certainly would not be true in a single member district situation. The only people clamoring for single member districts are the losers in the last Democratic primary. If we are to change our system of Government to satisfy those who lose at the polls, we would be forever changing what has gone down through the years as the best system of Government the world has ever known.

I will certainly appreciate every consideration you can give to the multi-member district concept as it relates to the Texas House of Representatives in Dallas County.

With every good wish for success, I remain

Respectfully,

Robert M. Greenberg

Robert M. Greenberg

RMG/sw

OTIS ELEVATOR COMPANY
OTIS BUILDING
1822 YOUNG STREET
DALLAS, TEXAS 75221

October 18, 1971

Hon. Crawford Martin
Attorney General
Capitol Station
Austin, Texas

RE: Legislative Re-districting

Dear Mr. Martin:

Regarding the above subject, may I urge you to vote to retain Dallas County electing it's legislators at Large.

Very truly yours,

OTIS ELEVATOR COMPANY

L. J. Schelling
Regional Service Sales Supervisor

NC

LS/ka

DICK STROMAN REAL ESTATE
1201 So. Buckner Boulevard
P. O. Box 17002 :: Dallas, Texas 75217
Phone (214) 391-2159

October 1, 1971

The Honorable Crawford Martin, Attorney General
Capitol Station
Austin, Texas

Dear Mr. Martin:

In your consideration of redistricting of the House of Representatives I respectifully request that you retain the present method of electing members from Dallas County to this legislature body of our state government. The multi-member district has provided an opportunity for all of the people of Dallas County to elect their representatives.

Single member districts in Dallas County would cause a fraction of the representatives and tend to destroy the total community interest.

I would also recommend that you consider a multi-member district for the State Senate because this method of election would provide better representation for the people of this county.

I appreciate your serious consideration of these requests.

Sincerely,

rne R. H. Stroman

R. H. (Dick) Stroman

RHS/cg

Texas Today

Dallas Is the Most Crowded City

By WALTER B. MOORE
Editor, Texas Almanac

DALLAS is Texas' most crowded county. Data just received from the 1970 U.S. Census show that Dallas County has a population of 1,545.2 per square mile of land area, 859 square miles.

MOORE

That is more than 800 persons per square mile greater than the population density in Harris County. The state's most populous county has 1,011 persons per square mile of land area. Its land area is 1,723 square miles.

Other populous counties also have a much smaller population density than Dallas. Bexar County (San Antonio) is listed as having 668.5 persons per square mile, El Paso 339.9 per square mile, and Tarrant County had 832 persons per square mile of land area when the count was made in April, 1970.

Texas continues to be a land of wide open spaces, with only 42.7 persons per square mile average for its 262,134 square miles of land area. That figure, however, represents a significant rise in density from the 1960 average of 36.4 Texans per square mile. In 1950 there were only 29.3 Texans per square mile and the average was 24.3 in 1940.

Growing population is the major reason for the rising population density, of course. But the land area is diminishing also because of man-made lakes. Dallas County is shown with a 1970 land area of 859 square miles, whereas the 1960 figure was 892.

For Texas, the Bureau of Census gives a land area of 262,134 square miles, a small decrease from the 1960 figure of 262,840.

Dallas residents who get a fenced-in feeling from these figures can find consolation in another aspect of the situation. Population density makes an area attractive to businesses that depend upon consumer buying, and that makes Dallas County tops in Texas.

Those wanting more breathing space can find that in Texas, too. Many counties have fewer than two persons per square mile and several (Hudspeth, Kenedy and King) have only one resident for each two square miles.

As Texans move to urban areas, the predominantly rural counties are declining in population density. Eastland County, for example, now has 13 residents per square mile, compared with 20.5 when the 1960 Census was taken. Delta County shows a drop from 21.2 to 17.9 persons per square mile of land area during the decade. There are many others with the same trends.

Comparing Dallas County's density with that of foreign nations is rather startling. The figure of 1,545.2 for our home county compares with an average of 708 per square mile in Japan, 606 in West Germany, 810 in Holland, 813 in Belgium, 415 in India and an estimated 1,200 per square mile in the congested river valleys of Communist China.

With the world's population expected to double in the next three decades unless birth and death rates change drastically, congestion as well as food shortages will be pressing problems. Most acute of those problems will be outside our boundaries, in the poorer nations that now have two thirds of the world's population and a birthrate twice as great as in the more developed countries.

That projected growth rate of the world, doubling each 30 years and increasing eightfold during a century, happens to be just about the rate of population growth in the United States between 1800 and 1900 — a fact that caused Americans to brag in the past but now alarms them, according to a new book, "The London Times History of Our Times."

Here in Texas our population growth rate declined sharply during the 1960s as compared with previous decades. In fact, the 16.9 per cent gain from 1960 to 1970 was about one third less than the percentage increase during the 1950s and the smallest for any decade on record, except for the 10.1 per cent increase during the depression of the 1930s.

With the reduced birthrate and probably smaller net immigration, Texas rate of growth during the 1970s may not be far from that low of 10 per cent. But that would mean about 1,120,000 more Texans, with most of them likely to locate in Dallas, Houston, Fort Worth and other metropolitan areas.

Ranking near the top in Texas problems, as it does in the U.S. and many other countries, is the need for redistribution of population. Texas has vast areas that need people, but those rural counties aren't likely to attract them unless ways can be found to create jobs and the other human needs and conveniences that most Americans now seek in cities.

Telefax

western union

Gen. Martin Telefax

930P CDT OCT 5 71 NSA438
NS DD112 XXT0904 NA PDB 2 EXTRA DALLAS TEX 5 818P CDT
HON CRAWFORD MARTIN
CHAIRMA REDISTRICITING BOARD STATE CAPTIAL AUSTIN TEX
UNABLE TO APPEAR BUT STRONGLY URGE SINGLE MEMBER DISTRICT FOR
DALLAS COUNTY LAST SURVEY TAKEN COUNTY WIDE INDICATES 61 PERCENT OF
VOTERS PREFER SINGLE MEMBER DISTRICTS SAME POLL VALDATED
BY PREDICTING BEN BARNES VICTORY TO EXACT PERCENTAGE POINTS
JAMES W STROUD STATE REPRESENTATIVE DALLAS TEXAS
(940).

- 8 -

WU 1270 (R6-66)

State of Texas

House of Representatives

Austin, Texas

JAMES W. STROUD
3507 McCONNAS
DALLAS, TEXAS 75205

September 9, 1971

Honorable Crawford Martin
Attorney General, State of Texas
Chairman Redistricting Board
Supreme Court Building
Austin, Texas

Dear General Martin:

In yesterdays newspaper a news item appeared that Representatives Jack Blanton and Dick McKissack were in route to Austin with a plan to divide Dallas County into three districts containing six members each.

It appeared that this plan was from the Dallas Delegation and was to be presented to the Redistricting Board.

I called Representative Bill Braecklein and he had not heard of this plan and while we do not wish to discuss the merits of the plan since we have not had a chance to see it, we resent any attempt to submit this redistricting plan under the guise that it represents all of our delegation.

Sincerely yours,

James W. Stroud

Telefax ✎ western union

Telefax

Gen. Martin

CC Walker

155P CDT SEP 28 71 HSA183 HSX067 DB177
D LLB114 XXT0336 HO PDB 1 EXTRA DALLAS TEX 28 1209P CDT
ATTY GENERAL CRAWFORD MARTIN, ATTORNEY GENERALS OFFICE
WUX AUSTIN TEX
ATTORNEY GENERAL MARTIN, SINCE THE HOUSE RE-DISTRICTING PLAN
WHICH WAS DECLARED UNCONSTITUTIONAL WAS THE CREATION OF SPEAKER
MUTSCHER AND IN VIEW OF THE UNCERTAINTY SURROUNDING SPEAKER
MUTSCHER'S STATUS I URGE THAT YOU AND THE OTHER THREE MEMBERS
ON THE RE-DISTRICTING BOARD NOT ALLOW SPEAKER MUTSCHER TO INFLUENCE
IN ANY WAY EITHER THE HOUSE OR THE SENATE RE-DISTRICTING PLAN,
TO BEE ADOPTED BY THE BOARD
REPRESENTATIVE DICK REED DALLAS.

2010

(1241)

WU 1270 (RB-66)

8418 Burchcroft
Dallas 75231
October 14, 1971

Dear Mr. Martin,

I was disturbed and disappointed at news that you favored multi-membered districts. This system of representation gives the voter a feeling of distance between himself and those who govern him. It leads to frustration & apathy. Single member legislative districts are a must in this day and age. Het is

bring government back
to the people!

Thank you for listening

Sincerely,

Catharine C. de Wit

NC (Mrs. Michiel de Wit)

Dallas News 10-13-71

ack

Martin Casts Ballot For At-Large System

By TOM JOHNSON

Atty. Gen. Crawford Martin has definitely thrown in his lot with House Speaker Gus Mutscher on the Legislative Redistricting Board in favor of multi-member, at-large state House districts in large counties such as Dallas, The Dallas News has learned.

The development means that the board's plan, to be announced this week probably Wednesday, will have all 18 House members in Dallas County running at large, as in the past.

Martin and Mutscher are joined by Comptroller Robert Calvert in favoring the at-large system.

Lt. Gov. Ben Barnes and Land Commissioner Bob Armstrong, the other members of the 5-man board, will dissent from the majority in favor of single-member districts for the Texas House.

MARTIN HAD BEEN considered the swing vote on the board.

The expected plan is virtually certain to be attacked in the courts on the basis that the at-large system discriminates against political and racial minorities.

Republicans, liberal Democrats and racial minority spokesmen have banded together in Dallas in favor of single-member districts. Many business interests and conservative Democrats came out strongly for the at-large plan.

HOUSTON ATTORNEY John Hill, a former secretary of state, made a strong plea at a public session of the board for single-member districts. He has intimated that he might challenge Martin in the attorney general's race in next year's Democratic primary.

The constitutionally authorized redistricting board is charged with drawing new House and Senate lines if the Legislature fails to do so after such decennial census. The Senate did not get around to redistricting itself and a House plan pushed by Mutscher was declared unconstitutional by a district court.

NC

PAULIA WEAVER
2118-D TUCKER STREET
DALLAS 26, TEXAS 75214

Oct. 13, 1971

Dear General Martin.

The attached article, I certainly hope, is inaccurate. (To think I'd been worried about Ben Barnes and how it is, now!) I have followed your career for many years and you are generally a fair man so if this article is correct, I hope you will reconsider your position on the issue. "At-Large" belongs to the Texas of yesterday....

Sincerely,

Paulia Weaver

ATTITUDES TOWARD SINGLE MEMBER DISTRICTS

"As you noticed, Dallas County voters will choose fifteen members for the Texas House of Representatives this year. Some people think each member should be elected from his own individual district; some think each should be elected by the whole county. In your opinion, which is better -- individual districts, or county-wide?"

	By Vote in State Representative Races				
	Voted For Demo Only	Voted For GOP Only	Voted For Some Of Each	Did Not Vote	All Voters
Individual districts	56%	62%	69%	62%	61%
County-wide	30	23	27	27	27
No difference	4	-	1	3	2
No opinion	10	14	3	8	9
	100%	100%	100%	100%	100%
Base - number of interviews	203	104	74	119	500

	By Vote for President			
	Humphrey Voters	Nixon Voters	Wallace Voters	Undecided Voters
Individual districts	54%	68%	60%	53%
County-wide	29	22	32	37
No difference	5	-	2	3
No opinion	12	10	6	7
	100%	100%	100%	100%
Base - number of interviews	164	206	100	30

5640 Bryn Mawr Dr.
Dallas, Texas 75209
Saturday, Oct. 16, 1971

Dear Attorney-General Martin:

I am writing to urge you to adopt the single-member House District for Texas. From your fair-minded appraisal of the Senate re-districting, you can see, I'm sure, that the single-member house district is really the only way to give fair representation to the people of our cities.

I think that as tax payers we residents of the city are entitled to this more democratic method of distributing our representatives. Thus we stay mindful of that watchword of our American Revolutionary war days - "No taxation without representation". (Right?)

Sincerely yours,

Frances P Larson (Mrs. Kenneth Larson)

110ct. 1971

Dear Sir:

I want "Gerimandering" eliminated in the re-districting.

Also I want Single member districts.

These two items are a must for your re-districting committee or no member of the committee gets any further support from me (assuming you have closed meetings).

It is as simple as that.

Regards,

Homer A. Ritcheson

348-7178

NC

HOMER A. RITCHESON
8366 Lullwater Dr.
DALLAS, TEXAS 75218

146

10/18/71

file
letter

Attorney General
Crawford Martin
Austin, Texas

Dear Sir:

Why would Harris County deserve single member districts and not Dallas Co Could it be that the Down town Dallas Establishment and fat Cat have more power with a redistricting Board than the people them selves. Now here in Garland we have had 3 U.S. Congressmen 2 State Senators and now put in with Ellis - ~~Freestone~~ Navarro and Limestone to Senatorial dist — And Big Down we are getting tired of being kicked around — And we will do our best to retire some officials in Austin if some thing isn't done about it.

We are tired of Down Town Dallas
Fat Cats with their heavy Contributions
to ~~[illegible]~~ Political Candidates
dominating every thing and every body
Now they have picked a candidate
from Garland to run on their slate
who has Twice been defeated by
the local Voters here for a Seat
on the City Council even — and
who is very obnoxious to every one here
Why Not Stay representing The Voters
which for a change — I guarantee
you that if you put it to a
Vote in Dallas to go Single Member
Districts it will Carry overwhelmingly
We are getting ready to organize, like
the Workmen did against the Graving
Tax, and retire a bunch of some
thing isn't Done —

Felix D. Robinson
1713 Hilltop Dr
Garland. Tex
75040

ack

Dallas, Tex
Oct 19-71

Hon Crawford Martin
atty Genl.
Capitol Station
Austin Tex.

Dear Crawford:

On the redistricting - One man one vote for equity to all.

Best Regards,

Edwin Lowe

Telefax

western union

Telefax

949P CDT OCT 4 71 NSA362
NS DD121 XXT0906 LE PDOM DALLAS TEX 4
ATTORNEY GENERAL CRAWFORD MARTIN
CAPITOL BLDG AUSTIN TEX
URGE YOU SUPPORT SINGLE MEMBER LEGISLATIVE DISTRICTS
Mr DAN WICKER, LEGISLATIVE DIRECTOR, DALLAS AFL-CIO-2525 DUNLOE
DALLAS TEX.

AFL-CIO 2525.

NC

file

WU 1270 (R8-66)

Telefax — western union — Telefax

932P CDT OCT 4 71 NSA366
NS DD129 XXT0905 LE PDM DALLAS TEX 4
ATTORNEY GENERAL CRAWFORD MARTIN
CAPITOL BLDG AUSTIN TEX
THE PROGRESSIVE VOTERS LEAGUE OLDEST BLACK POLITICAL ORGANIZATION
ENDORSES SINGLE MEMBER LEGISLATIVE DISTRICTS
BY MR EMMETT WHITMAN PRESIDENT 1217 BOSWELL ST DALLAS TEX 75203.
1217 75203. 1322

Dear Martin

Progressive Voters League

file

WU 1270 (R8-66)

151

western union

1041P CDT OCT 4 71 NSA384
NS DD160 XXT0868 LE NL PDF DALLAS TEX 4
ATTORNEY GENERAL CRAWFORD MARTIN
CAPITOL BLDG AUSTIN TEX
THE PRESIDENTS OF THE DALLAS COUNTY DEMOCRATIC CLUBS MEETING
AS THE COUNCIL OF CLUBS UNANIMOUSLY SUPPORT SINGLE MEMBER LEGISLATIVE
DISTRICTS FOR DALLAS COUNTY
DAN WEISER CHAIRMAN DEMOCRATIC COUNCIL OF CLUBS.
8/5a

file

WU 1270 (R8-66)

Ack

Dallas Texas
October 4 1971

The Honorable Martin Crawford, Chairman
Texas Legislative Re-Districting committee
Austin Texas. Dear General:

We do not have the proof since we are not within the intersanctum, but a lot of Dallas County citizens are just about convinced that the "fat cats" who always remain in the hidden corners of Dallas County, always appear at the proper time when the money is needed for the nomination of 15 candidates for the Legislature for Dallas County. We do believe all candidates are visited by the "fat cats". It is obvious that they control the majority of these candidates nominated. Hence these candidates when'elected' are really "lobbyists" in the true meaning of the term. Oh! yes, we know that they are all democrats, but you, Texas has not gotten away from voting for the label instead of the "issues".

We dare say if the state were Republican that the "fat cats" would be selecting Republicans for these 15 legislative places with the same compulsion and required service. This is a very good reason for the Texas Legislature to have 150 single member districts.

The Present Attorney General, the present Speaker of the House, the Present Lt. Governor and present Governor all started out from single member districts - Why should not all the citizens be treated as well as the four principle officers of the state of Texas??

The Dallas News did not report it, but the Times-Herald did report that the Attorney General of Texas did fight with all his might AGAINST single member districts for Texas before the recent Texas Supreme court hearing after this Honorable Court rendered the Legislature of Re-Districting null and void, which included Dallas County wide voting for 15 members. We observe that the Attorney General is also CHAIRMAN of the Legislative committee of five (5) members for doing the job that the Legislature failed to do and thethat questionable Mister Mutscher remains on the Committee.

Hon Fred Agnich, amember of the 62nd Legislature explained Speaker Mutscher's behavior thus: Mutscher appointed 45 chairmen of the House committees and 45 Chairmen of the Sub committees- 90 is able to control the entire legislative work, but this not all he appoints the full compliment on each committee and none of the 150 are assured of their assignments for more than two years. No member can or may question the speaker's action in these matters and with such control we have the most imprtant bill held over the last two or three days of the session with but little committee action. Shall we shout "Hail Hitler!!".

According to Texas constition only Single member districts is treating every one alike, so these county wide votes, Congressional District plans are unconstitional any way it may be observed.

We have checked 50 staight people of voted in the 1970 general election and we not one who could name THREE (3) Dallas county legislators. We wager that single member District Hill county would beat that.

The Honorable Delwin Jones, the Right Bower of Speaker Muscher organized the state into some 10 or 11 districts purportedly to give the people of Texas a chance to the re-districting of state by Congressional, State Senatorial and Legislative. be heard
The meeting in Dallas was reported to represent some 54 counties. The morning session was a long one Negroes, Mexicans, Democrats, Republicans and Independents had their say. A standing vote was asked on the questions of Single Member districts and conservatively at leat 66 percent stood of all the 54 counties representation. The only objection came from the Dallas county democrat chairman and one republican suggested that legislators be elected from State Senatorial districts. It was reported the after noon session had one objection to single member districts a local democrat precinct chairman.

If the other district meetingswere anything like the Dallas county meet Mister Jones wasted a lot tax payers' money and did as they pleased. We trust that committee will wise enough to give Texas 150 single member disrticts and handle this business in Texas instaed of Federal Courts.

Sincerely yours

O D Aston 5839 Mercedes ave Dallas

western union

846A CDT OCT 6 71 NSA016 SSJ017
NS DD153 XXT0960 KK POM DALLAS TEX 5
CRAWFORD MARTIN ATTORNEY GENERAL
AUSTIN TEX
PLEASE DONT CAST YOUR VOTE WITH GUS MUTCHER TEXAS NEEDS SINGLE
MEMBER DISTRICTS
NC VIRGINIA D SILLERS 4323 VERSAILLES DALLAS TEX. 8450 75205

Mrs. Donald A. Jr

WU 1270 (R8-66)

Telefax **western union** Telefax

1042P CDT OCT 5 71 NSA448
NS DD145 IXT0683 KK WL PDF DALLAS TEX 5
CRAUFORD C MARTIN, ATTORNEY GENERAL
AUSTIN TEX
IN ACCORDANCE WITH THE UNANIMOUS ACTION OF THE TEXAS UAW CAP COUNCIL IN AUSTIN ON AUGUST 28 1971 REPRESENTING 25 LOCAL UNIONS AND 25000 MEMBERS WE REQUEST THAT SINGLE MEMBER DISTRICTS BE ESTABLISHED
NC M J BAKER PRESIDENT TEXAS STATE UAW CAP COUNCIL.

28 1971 25 25000. BOX

2415 Hudspeth
Dallas - no zip address

WU 1270 (R8-66)

155

Telefax — western union Telefax

241P CDT OCT 6 71 NSA153
NS AIA070 (NS AAF047) AT 279AA229047 PD PMDDTA DAL 1125A EDT
10/06/71 ZCZC 4 XXT0168 XH PDF 1 EXTRA DALLAS TEX 6
ATTORNEY GENERAL CRAWFORD MARTIN DLR DO NOT PHONE
CAPITAL STATION AUSTIN TEX
BT
IN BEHALF OF THE DALLAS COUNTY UAW CAP COUNCIL REPRESENTING
8500 MEMBERS IN 8 LOCAL UNIONS WE REQUEST THAT THE REDISTRICTING
BOARD MEET IT'S RESPONSIBILITY BY ESTABLISHING FAIR AND RESPONSIVE
STATE GOVERNMENT IN ESTABLISHING SINGLE MEMBER DISTRICTS
JIM SHEFFIELD CHAIRMAN DALLAS COUNTY UAW COUNCIL

IAU 8500 @ 25¢

310 Oak Cliff Bank 2nd
4000 S. Zangs Blvd
Dallas

L.WU 1270 (R8-66)

4340 Ft Worth Ave
Dallas, Tex.
75204
Oct 3. 1971

Dear General Martin

According to Newspaper accounts you will be the swing vote to determine if we have single Member districts in Dallas County.

You Made one Statement that was encouraging and that was to give the Counties what the Majority want. Of Course that would permit a bare Majority to deny representation to a very substantial Minority.

However in Dallas County there isn't any doubt that a substantial Majority want single Member districts.

The Republicans want them all Minority Groups want them and at least Half of the White democrats want single Member districts. In the suburbs such as Mesquite Garland and Richardson the percentage of White democrats is 80-90%.

The poll structure that puts the Candidates name on a Card into the Voting booth to Prove how to vote. It is impossible to go into the qualifications of 15 or 20 persons.

The Sentiments in the suburbs has increased or become much more positive since the integration problems of the City. Richardson Garland & Mesquite have integrated without incident.

The suburbs don't want to be represented by a dozen town-

power structure any where including
the State legislature. You can go over
the voting boxes, We were able to
elect the democrats by a solid
straight ticket vote in the Negro
districts. There isn't any doubt
that the Majority in Dallas County
wont favor Single Member districts

Sincerely
Wm J. W. Bass Mrs

Telefax **western union** Telefax

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CRAWFORD MARTIN
ATTORNEY GENERAL
STATE OF TEXAS AUSTIN TEX
CARPENTERS DISTRICT COUNCIL OF NORTH CENTRAL TEXAS IN REGULAR MEETING TUESDAY OCTOBER 5, ENDORSED A RESOLUTION SUPPORTING SINGLE MEMBER DISTRICTS FOR THE HOUSE OF REPRESENTATIVES AND THE STATE SENATE FOR THE STATE OF TEXAS
A J CHRISTIAN EXECUTIVE SECRETARY CARPENTERS DISTRICT COUNCIL OF NORTH CENTRAL TEXAS. 937A

508 N. Great Southwest Pkwy.
Arlington

WU 1270 (RB-66)

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ZCZC 4 XXT0234 NP PDB DALLAS TEX 7 NFT
ATTORNEY GENERAL CRAUFORD MARTIN,DLR DONT PHONE
STATE CAPITOL STATION AUSTIN TEX

ET
I URGE YOU TO USE YOUR INFLUENCE FOR SINGLE MEMBER DISTRICTS FOR DALLA
S
COUNTY IN THE DELIBERATIONS OF THE TEXAS REDISTRICTING BOARD THE
VAST MAJORITY OF DELEGATES IN DALLAS COUNTY WISH TO HAVE
SINGLE MEMBER DISTRICT
RON CLOWER, 1040

no address available

WU 1270 (R8-66)

Attorney general holds key to redistricting

Attorney general holds key to redistricting

By Bo Byers

AUSTIN—The problem of redistricting the Texas House of Representatives is getting stickier by the day, and the man most under the gun is Atty. Gen. Crawford C. Martin.

An Oct. 23 deadline for completion of the reapportionment task is rushing toward the Legislative Redistricting Board, of which Martin is chairman, and as of this writing, the staff has no guidelines from the board on how to approach the job.

The big issue, the one that has the board on high center, is whether to draw 150 single member districts or whether to allow multimember districts in metropolitan areas.

Sen. Oscar Mauzy of Dallas and others—including Republicans and liberal Democrats — are threatening court challenge to any House redistricting plan that does not establish separate geographic districts for each of the 150 house members.

If the five-member redistricting board goes with multimember districts and thereby precipitates a court battle, confusion and uncertainty will confront prospective candidates for House seats in the 1972 elections.

Two prime difficulties are posed: First, voter registration cannot be completed until county commissioners' courts know with certainty where House (and Senatorial) district lines will lie so that voting precincts can be drawn to conform.

Second, with Nov. 7 the deadline for establishing residence to meet the one-year requirement before next year's general election, persons wanting to run for the Texas House will not know where their districts will lie if the courts later strike down a multimember plan and order single districts drawn.

Texas voters generally may not be greatly concerned whether new district lines are helpful or detrimental to political ambitions of legislative candidates, but the various interests and groups who recognize their stake in Texas legislative action are nervous about the outcome.

Martin is considered the swing vote on the question.

Lt. Gov. Ben Barnes, a candidate for governor next year, and Land Commissioner Robert L. Armstrong, who will be up for reelection, favor single member districts.

House Speaker Gus F. Mutscher and Comptroller Robert S. Calvert favor multimember districts.

Martin has not stated which approach he favors, saying only that he wants the board to come up with a constitutional, fair plan.

It would be a fair assumption that Martin, on the basis of his political philosophy as a conservative Democrat, would prefer multimember districts particularly on the countywide basis which has existed for years in Dallas, Bexar (San Antonio) and Tarrant (Fort Worth) counties for years.

Conservative Democrats have dominated election of state representatives in those three big-city counties. Single member districts undoubtedly would lead to election of more liberal Democrats, Republicans, blacks and Mexican-Americans in those counties.

While multimember districts probably are his preference, Martin also faces the political reality that if he opposes Barnes and Armstrong on single member districts and sides with Mutscher and Calvert, he may be inviting trouble in his bid for re election.

Houston attorney John Hill, who ran for governor in 1968, has been eyeing the race for attorney general.

He appeared before the Legislative Redistricting Board to urge single member districts for the house. He could seize on this as an issue on which to challenge Martin, if Martin vies for multimember districts.

Martin might find it politically embarrassing to be aligned with Mutscher on a multimember plan, for it was under Mutscher's leadership that the House this year passed a redistricting plan later held unconstitutional by the Texas Supreme Court. That is why the redistricting board inherited the job of trying to draw a valid plan.

Byers, chief of The Chronicle's Austin Bureau, is a veteran observer of Texas politics.

Bible verse

LOVE YOUR ENEMIES, do good to them which hate you. Bless them that curse you, and pray for them which despitefully use you. — Luke 6:27-28.

THE HOUSTON CHRONICLE
AND HERALD

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191

OSCAR H. MAUZY
DISTRICT 23
SOUTHWEST DALLAS COUNTY

The Senate of The State of Texas
Austin

COMMITTEES
CHAIRMAN
EDUCATION
VICE-CHAIRMAN
YOUTH AFFAIRS
MEMBER
ADMINISTRATION
CONSTITUTIONAL AMENDMENTS
INSURANCE
REDISTRICTING
ELECTIONS
RULES

October 6, 1971

Hon. Crawford Martin
Chairman
Legislative Redistricting Board
Supreme Court Building
Austin, Texas

Dear General Martin:

At the hearing this morning of the Legislative Redistricting Board, I neglected to have introduced into evidence the three public opinion polls taken by the firm of Louis, Bowles and Grace regarding single member districts for the House of Representatives.

I am enclosing xerox copies of the cover page and the polls that were made for me in 1966 and pages 39, 40, 41 and 42 of that report as well as the cover page of the poll made for Senator McKool and pages 67 and 68 of that poll.

I am furnishing copies of these exhibits to the other members of the Board and by copy of this letter, I am requesting Mr Robertson furnish xerox copies of the poll made in September, 1968.

Sincerely,

Oscar H. Mauzy

cc: Hon. Ben Barnes
Hon. Gus Mutscher
Hon. Robert Armstrong
Hon. Robert Calvert
Mr. Vic Robertson
Louis Bowles and Grace
Southland Center
Dallas, Texas

Louis, Bowles and Grace
Research Consultants
Southland Center
Dallas
Alex Louis • Walter Bowles • Raymond Grace

THE CLIMATE OF OPINION
IN DALLAS COUNTY'S SOUTHWEST
STATE SENATORIAL DISTRICT

January 1966

Confidential Results of a District-wide Sample Survey

Conducted For:

MR. OSCAR MAUZY

REPORT COPY # 9

Project 506

CHOICE BETWEEN REPRESENTATIVES RUNNING AT-LARGE AND BY DISTRICTS

"Dallas County this year will elect fourteen members to the Texas House of Representatives. Some people think the county should be divided into fourteen districts, each of which should elect its own representative. Others favor having all representatives elected by vote of the whole county. Which do you think is better?"

	Likely Democratic Primary Voters	All Voters District Sample
14 districts better	40%	41%
County-wide better.	40	39
Undecided	20	20
	100%	100%
Base - number of interviews	244	408

REASONS IN FAVOR OF ELECTING REPRESENTATIVES BY INDIVIDUAL DISTRICTS

All who favored electing representatives by individual districts were asked: "Tell me how you feel. . . Why do you feel that would be better?" Their reasons are tabulated below:

Better representation: each candidate would know the needs of his local area better; would be closer to the people; each district would get better representation; he would be able to do a better job if he were representing a smaller group of people; candidate would feel a greater responsibility to his home district; representative should be a definite part of his district; would reside in his district; district would benefit more -- get more of what it wanted; understands individual problems; etc..	70%
Prevent special interest groups from gaining control: part of the county could control all areas if representatives elected on county-wide basis; a small part of the county could represent the whole county if elected on county basis; don't want the county represented by a small clique; etc.	3
More apt to elect a better qualified candidate: people would get to know their candidate better; people would not be familiar with candidates from other areas of county; would know the qualifications of a local man; etc.	18
No ideas.	12
	103%
Base - all voters favoring election of representatives by individual districts	168

REASONS IN FAVOR OF ELECTING REPRESENTATIVES AT LARGE

All who favored electing representatives at large were asked: Tell me how you feel. . . Why do you feel that would be better?" Their reasons are tabulated below:

Better representation: representatives should have over-all county viewpoint; representatives elected by individual districts would lean toward their own districts forgetting the over-all interests of the county; everyone should have the same opportunity to elect candidates; not good to have representatives partial to their own districts; etc.	25%
Teamwork, cooperation among representatives: representatives would work as a team for the benefit of the whole county; too much controversy between representatives elected in separate districts; would be too much squabbling among representatives from various districts; already too much dissension; etc.	17
Candidates likely to be better qualified: candidates would have better ideas; would be able to get the best qualified candidates; wider choice of candidates; election in separate districts would generate too many low quality politicians; etc..	16
Simplify election procedures, cut election costs: small districts impractical; some districts might not have enough voters to support an election; elections in different districts would be too confusing; too complicated; election should be kept simple; cost too much for election in separate districts; too much trouble dividing county into voting districts; etc..	10
No ideas.	35
	103%
Base - all voters favoring election of representatives by vote of whole county.	157

REACTION TO DALLAS LEADERS RUNNING SLATE OF CANDIDATES AS TEAM

"Do you approve or disapprove of the idea of Dallas County leaders picking a slate of fourteen legislative candidates and running them as a team?"

	Likely Democratic Primary Voters	All Voter District Sample
Approve	23%	20%
Disapprove.	50	51
Undecided	27	29
	100%	100%
Base - number of interviews	244	408

THE CLIMATE OF OPINION IN DALLAS COUNTY'S 16TH STATE SENATORIAL DISTRICT

Louis, Bowles and Grace, Inc.
Research Consultants

Dallas, Texas 75207

ATTITUDES TOWARD INDIVIDUAL LEGISLATIVE DISTRICTS

"This year, Dallas County will elect fifteen members to the Texas House of Representatives. Some people think each member should be elected from his own individual district; some think they should all be elected by the whole county. In your opinion, which is better -- individual districts, or county-wide?"

	Likely Democratic Primary Voters	All Voters, District Sample
Individual district	55%	58%
County-wide	35	31
No difference	3	3
No opinion.	7	8
	100%	100%
Base - number of interviews	149	400

REASONS FOR FAVORING INDIVIDUAL DISTRICTS

Those who said they favored electing each member of the Texas House of Representatives from his own individual district were asked: "Tell me why you feel that way. Just tell me anything else that comes to mind."

Better representation: district would benefit more; will do a better job of representing us; would be more interested in his district; will know the needs of the people better; chance to see what needs to be taken care of; work more for his district; can serve the people better; could get more work done to help community grow in the right way; will have a closer relationship with the people; could concentrate his effort on our district; can accomplish more for a smaller group; could help more with individual problems; etc.	62%
Voters more informed, better able to elect a qualified candidate: people will know their candidate better; would have more knowledge of him and what he stands for; you know more about them; could not know enough about all the candidates in all the districts; if county-wide, you wouldn't have an opportunity to know the man; would know the qualifications of a local candidate; fifteen men are too many to consider; etc.	33
Prevents inequitable representation: wouldn't want most of the candidates from one district; if on county-wide basis, some districts would be overlooked; keeps one political group from controlling the election; a small part of the county could represent the whole county if elected on county basis; etc.	6
Miscellaneous reasons for electing from individual district: too much difference in needs from one section of the county to another; problems of district aren't always the same as problems of the county; if they are going to serve the district they should be voted on from the district; etc.	3
No reasons mentioned	1
	109%
Base - those favoring election from individual districts.	230

REASONS FOR OPPOSING INDIVIDUAL DISTRICTS

Those who said they favored electing each member of the Texas House of Representatives by the whole county were asked: "Tell me why you feel that way. Just tell me anything else that comes to mind."

Better representation: representatives should have over-all county viewpoint; can represent the county as a whole; more would be done for all the people -- no district would be overlooked; will give all a chance to elect candidates; would get a greater cross section of how people feel; betterment of the whole county instead of just one district; would be representing a larger group and a larger area; would get more representation since every candidate would represent every district; etc.	56%
Candidate likely to be better qualified: we will elect people who are better qualified; better chance of getting a good representative; wider choice of candidates will enable us to get better representatives; will have more experienced men available; etc.	19
Teamwork, cooperation among representatives: would make each representative more effective; would tend to eliminate dissension among representatives; all fifteen could work much better together than separately; would be more interested when working together; there is strength in working together; prevent squabbles; etc.	7
Miscellaneous reasons for electing county-wide: ward politics get nasty -- wouldn't want it to get down to that state of affairs; more fair; we've always done it this way; small districts not practical; etc.	4
No reasons mentioned	17
	103%
Base - those favoring election from the whole county.	124

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CRAWFORD C MARTIN, ATTY GENERAL, DELIVER
CAPITAL STATION DLR AUSTIN TEX

IN BEHALF OF THE UAW INTERNATIONAL UNION WE REQUEST THAT THE REDISTRICTING BOARD MEET ITS RESPONSIBILITY BY ESTABLISHING FAIR AND RESPONSIVE STATE GOVERNMENT IN ESTABLISHING SINGLE MEMBER DISTRICT
CARLAND HAM LEGISLATIVE REPRESENTATIVE 400 SOUTH ZANG SUITE 310 DALLAS TEXAS 75208.(1153) 1065P

172

WU 1270 (RB-66)

Telefax **western union** Telefax

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CDT
HONORABLE CRAWFORD MARTIN, ATTORNEY GENERAL, DONT PHONE
CAPITOL BLDG AUSTIN TEX
AS PRESIDENT OF DALLAS COUNTY OLDEST AND LARGEST POLITICAL
ORGINIZATION I STRONGLY URGE YOU TO SUPPORT SINGLE MEMBER DISTRICT
Ms. RONDA VECCHIO PRESIDENT DEMOCRATIC WOMEN OF DALLAS COUNTY
2310 INGLESIDE GRAND PRAIRIE TEX.

(1202) 1235P

WU 1270 (RB-66)

Telefax

western union

Telefax

1191A CDT OCT 5 71 MSA194
MS LBA009 IN PDF LUBBOCK TEX 5 1137A CDT
CRAWFORD MARTIN, ATTY GEN
AUSTIN TEX
ON BEHALF OF 340 MEMBERS OF UAW LOCAL 1621 LUBBOCK, TEXAS.
I REQUEST YOU ESTABLISH SINGLE REPRESENTATIVE DISTRICTS
KEN JORDAN,
PRESIDENT UAW LOCAL 1621

340 1621 UAW 1621
(1145A).

WU 1270 (R8-66)

Telefax — western union — Gen Telefax Newton

447P CDT OCT 3 71 NSA057
NS DD013 XXT0157 JU PDM P&F DALLAS TEX 3
ATTY GEN CRAWFORD MARTIN
ATTY GENERAL OF TEXAS AUSTIN TEX
PLEASE VOTE FOR JUSTICE AND REPRESENTATIVE GOVERNMENT THE PEOPLE
OF DALLAS WANT SINGLE MEMBER DISSTRICTS
DR GERALD R FALOONA 4933 SWISS AVE DALLAS TEX 75214.

N — S/Sa

WU 1270 (R8-66)

DAVE MOSS
BUSINESS PROPERTIES
RI 7-9227 FIRST NATIONAL BANK BUILDING DALLAS, TEXAS 752
74

SEPTEMBER 28, 1971

ATTORNEY GENERAL CRAWFORD MARTIN
CAPITOL STATION
AUSTIN, TEXAS

DEAR GENERAL MARTIN:

AT PRESENT THIS COUNTY CONTAINS 1,321,000 PEOPLE; THE NUMBER IN A TEXAS CONGRESSIONAL DISTRICT IS ABOUT 470,000. IF OUR HOUSE MEMBERS RUN AT LARGE, THERE WILL BE AS MANY AS FIFTY CANDIDATES FOR EACH VOTER TO DECIDE ON FOR THE HOUSE ALONE.

I KNOW YOU WANT TO HELP THE WELFARE OF OUR STATE. ENCLOSED I THE DALLAS NEWS ACCOUNT OF THE HOUSE REAPPORTIONMENT HEARINGS LAST MARCH HERE. AN OVERWHELMING MAJORITY OF THOSE ATTENDING THESE OPEN HEARINGS STOOD UP TO SHOW THEY FAVORED SINGLE-MEMBER DISTRICTS, AS THE DALLAS NEWS DULY REPORTS.

PLEASE HELP US ENACT THE WILL OF THE CITIZENS INTO LAW.

SINCERELY,

Dave Moss

DAVE MOSS

NC

DALLAS MORNING NEWS - MARCH 20, 1971

Mapping Changes Asked

Concerted Call Made for Single Member Districts

By TOM JOHNSON
and DAVE MCNEELY

Spokesmen for Republicans, blacks and liberal Democrats put their voices together in a concerted call Friday for single member districts to replace the present at-large system of electing state legislators in Dallas County.

Members of the House redistricting subcommittee also heard County Democratic Chairman Earl Luna counsel caution in drawing new district lines so that the Dallas delegation's effectiveness will not be diluted.

Others advocating the status quo included spokesmen from Grayson, Smith and Ellis Counties who want to remain in congressional districts now represented by Ray Roberts and Olin (Tiger) Teague.

Roberts, Teague and Graham Purcell now represent districts that are in large part rural but which encompass portions of Dallas County. Earle Cabell and Jim Collins are congressmen in districts wholly within Dallas County.

FIFTEEN STATE repesentatives are now elected at lareg in the county. The 1970 census will increase the county's share of the 150-member House to almost 18.

Dallas County, with a population of 1,327,321, is now entitled to two full congressmen and the greater part of a third.

The same forces which want single member legislative districts also want congressional redistricting to be approached on an urban-out basis, rather than letting rural areas chip away at Dallas' population strength from without.

Conservative Democrats have traditionally supported the at-large system on the theory that single member districts would bring "ward politics" to Dallas County.

RON CLOWER, STATE CHAIRMAN of the Young Democrats of Texas, said the ward politics argument amounts to a straw man.

"We have ward politics in Dallas right now," Clower said, "but the trouble is, it's one big ward. A lot of people would prefer 17 or 18 wards so all could get a share of the action."

Luna said the five congressmen representing Dallas "have served us well" and he pointed out that the Dallas legislative delegation includes seven committee chairmen, the largest concentration in the state.

But Clower countered that the number of chairmen from Dallas might be a measure of the county's subservience to Speaker Gus Mutscher, himself under a cloud of sorts as a result of the National Bankers Life-Sharpstown Bank affair.

DALLAS STATE SENATORS Mike McKool, Oscar Mauzy and O. H. (Ike) Harris all stressed that the federal judiciary's "1-man, 1-vote" mandate would best be served by single member legislative districts and by starting at metropolitan areas and working outward in congressional redistricting.

Rep. Dick Reed took the occasion to unveil a specific plan for cutting Dallas County up into 15 full legislative districts and into the greater parts of three others.

County towns such as Garland, Mesquite, Irving and Carrollton would more or less be represented by individual legislators under the Reed plan and Richardson, Grand Prairie and De Soto-Lancaster would be in districts which would spill over into Collin, Tarrant and Ellis Counties

ABOUT TWO-THIRDS OF THE assembled crowd of some 250 rose when Reed asked all who favored single member districts to stand.

— "Dallas County has more citizens than 17 states," Reed said, "and it's impossible for this population of more than 1.3 million to be effectively represented on an at-large basis."

Reed said the county is only 16,000 people short of having 18 full districts of 74,645, the median district population under 1970 census figures.

Reed's plan would result in three black districts and five to six Republican districts.

THE REV. ZAN HOLMES, black Dallas representative, said the county is about 25 per cent black now and asked the subcommittee to "not prevent us from increasing our representation."

"We are quite other ... ou to work within the syste , Holmes said, "and we trust that the committee will provide us an opportunity to work within the system. We have not been properly represented in the past."

Elbert Tuner, a black Democratic precinct chairman from Oak Cliff, said the at-large system has been lauded as effective, but not as being fair. "We've got too much effectiveness in some areas and not enough fairness," he said.

Bill Stehr, a liberal defeated in a heated runoff primary race last June by Rep. Sam Coats, said "Dallas County has been dominated by a very narrow clique" which has kept any political talent of high caliber from emerging.

JAMES RAY HENRY, a Democratic precinct chairman from Seagoville, said the at-large system has allowed current house members to run rough-shod over the needs of people from areas like Seagoville.

"If you have single member districts," Henry contended "you're going to have more than one black (representative) and more than one Republican, but at least government will have taken a step back toward the people."

Bill Clark, conservative Democratic political chieftain, said the people of Dallas like having five Congressmen share parts of the county. Some other speakers said the people of Dallas would prefer to have Congressmen they don't have to share with rural areas.

Jones said the Dallas turnout was the largest of any of eight regional hearings held around the state. He said he hopes the committee can be finished redrawing all district lines by May 15 or the latter

Telefax **western union** Gov. Telefax Message

(A

309P CDT SEP 29 71 MSA222
MS AIA182 NP PDB SAN MARCOS TEX 29 220P CDT
HON CRAWFORD MARTIN
ATTORNEY GENERAL OF TEXAS FAX AUSTIN TEX
AS YOU UNDERTAKE THE REDISTRICTING OF THE HOUSE OF REPRESENTATIVES
I WISH TO REMIND YOU A JUST COMPLETED POLL MADE AMONG OUR 25000
TEXAS MEMBERS SHOWS TEXAS INDEPENDENT BUSINESS FAVORS SINGLE
MEMBER DISTRICTS BY A MAJORITY OF OUR TO ONE. THE SIGNED BALLOTS
OF THIS POLL ARE AVAILABLE FOR INSPECTION IN THE GOVERNOR'S
OFFICE. YOU ARE RESPECTFULLY REQUESTED TO ADOPT THIS SINGLE
MEMBER DISTRICT MAKE UP OF THE HOUSE TO ASSURE PROPER REPRESENTATION
OF ALL TEXANS AND BRING ABOUT A CLOSER ACQUAINTANCE OF CITIZENS
WITH THEIR REPRESENTATIVES WHICH WE TRUST WILL AID IN PROMOTING
A MORE RESPONSIVE AND RESPONSIBLE LEGISLATURE
GEORGE T CATES TEXAS DIVISION MANAGER NATIONAL FEDERATION
OF INDEPENDENT BUSINESS 336P

71 (RC-68)

Return after Cardenas' please

WU 1270 (R8-66)

178

JERRY BARTOS

October 16, 1971

Attorney General Crawford Martin
Texas State Capitol Building
Austin, Texas 78711

Dear Attorney General:

It comes as quite a disappointment to me to read in the newspaper that you are supporting a continued at-large election of representatives from large cities and counties.

It must be obvious to you that this rules out any person of moderate means who does not gather large financial support in running for office. This is a step to the rear for greater democracy which is that government which is closest to the individual in his individual legislative district.

I am sharply disappointed that you did not choose to support a redistricting of metropolitan areas into single member districts to give the masses of people an individual, close representative with whom they can identify and be heard in state government.

Sincerely,

Jerry Bartos

JB/jb

P. O. Box 35825
Dallas, Texas 75235

GE WILLEFORD M.D. State Chairman MRS. MALCOLM MILBURN State Vice-Chairman JAMES R. KANE Executive Director

THE TEXAS GOPARTY

The BACKBONE of Political Reform for Texas
310 Littlefield Bldg. Austin, Texas 78701 (512)47

October 5, 1971

The Honorable
Crawford Martin
Texas State Attorney General
Supreme Court Building
Austin, Texas

Dear General Martin:

Thank you for giving the Texas G.O.P. an opportunity to testify before the Legislative Redistricting Board last Thursday. At the conclusion of the hearing, I gave Mr. Johnson copies of our proposed redistricting plan, creating 150 single member districts. In addition, I gave him maps showing single member plans for all of the counties which formerly had multi-member districts.

We hope that this plan, with its accompanying statistical data and maps, will be of assistance to you and the other members of the Board in drawing a satisfactory redistricting plan for the Texas House of Representatives.

If we may be of any further assistance to you or to the Board, please call upon us.

Very truly yours,

James R. Kane
Executive Director

JK:law

cc: Messrs: Agnich
Armstrong
Barnes
Boeckman
Calvert
Mutscher
Mrs. Malcolm Milburn

PLAINTIFF'S EXHIBIT 77

Interposition Move Sent to Committee

By [illegible]
Staff Correspondent

AUSTIN, Texas — State representatives Thursday sidetracked an "interposition" resolution declaring State rights.

The lawmakers sent the measure to the State Affairs Committee by an 85 to 52 vote.

Five other Dallas members joined Rep. Robert E. Johnson of Dallas as sponsors of the bill. There were nine other signers. The six Dallas members voted against putting the resolution in a committee.

Rep. Barefoot Sanders, Dallas' seventh member, voted for the committee move. Sanders said that he had not signed the resolution because he had no chance to read it before it came to the House for debate. He indicated he might support it later.

Although Johnson omitted any direct reference to the racial segregation dispute, his resolution was backed most strongly by East Texas legislators. It criticized the United States Supreme Court for "recent decisions . . . based upon a foreign and strange concept called 'modern psychological knowledge'" rather than the U.S. Constitution.

Rep. Joe N. Chapman of Sulphur Springs, speaking for the proposal, said it would advise federal officials—President, Congress and Supreme Court—that "we believe the Supreme Court has gone too far . . . that we believe in local government."

Sponsors had hoped to get House approval Thursday. After it went to committee, Chapman expressed regret that so few members had copies before the measure came to the floor. Copies were distributed later, and Chapman invited members to join as co-authors.

One original signer, Rep. Richard C. Slack of Pecos, said he signed through mistake. Slack thought the resolution was one criticizing Congress for a recent change in the rules for handling Mexican national farm workers. The latter resolution passed the Legislature Thursday.

Slack told a reporter he was not sure he will ever support the Johnson resolution.

"The segregation problem is mostly behind us in my district," said Slack, who hails from far West Texas. Schools in his district, with only a few Negroes, have integrated.

Slack said the change came with little incident, but that some citizens opposed it. He reported that voters at Pecos "cleaned out" the school board at the first election after it ordered integration.

"I think we ought to let each school board decide how it has to handle the matter," Slack concluded.

Representative Johnson is uncertain when to ask for a State Affairs Committee hearing on his resolution. The same group has 11 bills to consider, sponsored by pro-segregation forces. Hearings on these probably will be requested within the next month, according to sponsors.

Rep. Harold G. Kennedy of Marble Falls moved to send Johnson's resolution to committee.

"Some of us feel we may be with him in belief, but not in wordage," said Kennedy. "Maybe some of us are not with him in belief."

Rep. Ben Atwell of Dallas said Johnson was simply stating "the time-honored doctrine of interposition."

This idea for a state to express disfavor with an action of the Federal Government was revived after the Supreme Court held that compulsory segregation in public schools is unconstitutional. Johnson's resolution was based on one from Virginia, where the idea originated.

"Until the questions here asserted by the State of Texas be settled by clear constitutional amendment, Texas declares her firm intention to take all appropriate measures honorably, legally, and constitutionally available to the state to resist illegal encroachment upon her sovereign powers," the resolution said.

It calls for other states and the Congress to protect State rights.

The Johnson resolution expressed concern over a federal judge's order for arrest of 16 citizens in Clinton, Tenn., for alleged interference with school integration.

The Texas legislator said the judge "cited certain citizens who were not before the court and were not parties to such litigation for contempt, and Texas is convinced that if a judge has such authority, then a citizen of the Lone Star State likewise, without violating any statutory enactment, could be punished in the absence of an indictment by a grand jury and in deprivation of the right to a trial by jury.

"Such proceedings would be in violation of every principle of Anglo-American jurisprudence, by such action a federal court could deliberately resolve to destroy the Constitution of the United States and [illegible] and defy the supreme

PLAINTIFF'S EXHIBIT 78

Staff Appointments Made by Governor

Austin Bureau of The News

AUSTIN, Texas — Staff appointments were announced Wednesday by Gov. Price Daniel.

Administrative assistants will include Jake Jacobsen, executive assistant, George Christian, press relations, Mrs. Virginia Ward, internal administration, Jess Irwin, budget, and Jimmy Banks, business office.

William L. McGill will remain as coordinator of Civil Defense and Disaster Relief.

Secretaries who were with Daniel as a United States Senator in Washington and have moved with him to Austin are Miss Margaret Wentworth Behrens, Mrs. Maydell McDermett, and Mrs. Terrell Allen.

Mrs. Ward has been working for Daniel since 1951 when he was Speaker of the Texas House of Representatives. Jacobsen and Mrs. Allen were on his staff when Daniel was Attorney General.

Banks, Irwin and McGill are holdovers from the staff of Gov. Allan Shivers.

Christian, former Austin newspaperman, worked for Daniel a short time in Washington before returning here with the Governor.

The Governor announced that his sister, Miss Ellen Daniel, will serve as a secretary for personal correspondence. She will not be on the state payroll, however.

Bills to Bar Integration Are Offered

Austin Bureau of The News

AUSTIN, Texas — A nine-part package to preserve segregated public schools was offered Wednesday by East Texas legislators.

The would carry out recommendations of former Gov. Allan Shivers' statewide advisory committee on segregation. Gov. Price Daniel has opposed integrated schools except by local action.

The nine bills previously announced are a grad by representatives Virginia Duff of Terrell, Jerry Sadler of Perrella, Ben Ferrell of Tyler, Joe S. Chapman of Sulphur Springs, Amos A. Martin of Paris, Abe Mays Jr. of Atlanta, and Reagan P. Huffman of Marshall.

They would prohibit payment of state funds or power transferred to a school of another race without approval at a local election, set up a pupil assignment plan using factors other than race, require maintenance of segregated schools until abolished by an election, permit payment of state tuition for students to attend non-sectarian private schools when segregated public schools are unavailable.

An appeal procedure is provided, through local school districts to the Texas Education Agency and a Joint Legislative Committee on School Assignments. The attorney general would be directed to defend all lawsuits brought to integrate local schools and the legislative committee rather than local board would be defendant.

Two other bills already introduced bring to 11 the total this session seeking to preserve segregation. One of these provides penalties for school officials permitting integration without an election. The other forbids employment of any member of National Association for the Advancement of Colored People as a teacher or by any other state or local government agency.

Rep. [illegible] of Dallas is preparing an interposition resolution aimed at the legislature's opposition to federal encroachment in public school matters.

Other new house bills include:

A [illegible] law.

Provision for grand juries to employ investigators.

Require regular training of police [illegible] officers.

An [illegible] to [illegible] damages a [illegible]

PLAINTIFF'S EXHIBIT 82

The Dallas Morning News

THURSDAY, JULY 24, 1958

For Senate and House Posts

AT THE NATIONAL LEVEL in Saturday's primaries, Texas voters are concerned in initial action with selection of the candidates for the one United States Senate post involved and with the nominations for Congress in each district. In the precinct conventions that meet when the polls close at 7 o'clock, they are concerned in the vital control of party machinery which affects both national and state races in the general campaign.

In the Senate race, both candidates have served as United States Senators, neither by a majority choice of the electorate. Bill Blakley was appointed to fill a vacancy. Ralph Yarborough won a plurality in a vacancy election in which there were no party nominees. This is the first time either has asked for a majority in the Democratic Party to name him the Senate candidate. Blakley has never before sought a nomination. Yarborough has been three times defeated as a nominee for Governor.

The choice is simply between conservative thinking along historic American lines and the welfare state socialism of the New Deal, the Fair Deal and the present liberal-labor alignment in Texas.

The News recommends Bill Blakley, a business and industrial leader who has made a personal fortune and uses it for civic good. Blakley is a plain-speaking, indeed outspoken, conservative, sound in his economic reasoning and as devoted to the general interests of his country and his state as any man could be, regardless of his slant of thought. Conservatives can make no mistake in voting for Blakley.

Ralph Yarborough is the liberal candidate. He is the choice of organized labor, has the support of NAACP rank and file, has sought office consistently as the foe of the conservative control of the past few years. There is no criticism of his ability, though The News criticizes his methods.

In the Dallas Fifth Congressional District, it is to be hoped that Bruce Alger, asking a third term, is renominated by the Republicans for two reasons. In two terms he has proved himself one of the ablest independent thinkers in the Lower House. Dallas can have no better representative. The other reason is that he is the target of as arrant an operation of political chicanery by liberal-labor as ever disgraced the political book. It is one of the best arguments for voting against liberal-labor.

In the Democratic primary, The News recommends Joe Pool, a down-the-line conservative over Barefoot Sanders, who has liberal-labor support. Both have been able members of the Dallas legislative delegation.

You must vote in your own primary. Republicans should take part in theirs to renominate Alger, who is unlikely to lose a real GOP vote. Democrats must vote in their primary if Blakley is to carry Texas.

REFERENDUM GROUP'S REPORT

PLAINTIFF'S EXHIBIT 87

5-1-58

D

Dallas Lawmakers Record Heavy Segregation Vo

By ALLEN DUCKWORTH
Political Editor of The News

Dallas members of the Legislature voted heavily in favor of segregation bills at last year's session, a report by the Texas Referendum Committee said Wednesday.

Robert Cargill of Tyler, chairman of the committee, released voting records on 11 segregation ballots taken in the House, and on three voice and one record vote of the Senate.

The referendum group sponsored the petition that put segregation issues on the 1956 ballot. Voters approved segregation steps by about 4 to 1. In the legislative session, the committee pushed bills designed to protect segregation.

The 11 House votes in Cargill's report were on: A bill banning NAACP members from school district employment (two votes, second reading and final passage); a bill cutting off state aid to school districts where integration takes place without local option authorization; bill allowing school board the right of placement of pupils according to educational curriculum and environment of the individual students and allowing parents to withdraw students from integrated schools; bill allowing grants for educational purposes to children where no separate public schools are provided; bill allowing transfer to be based on such factors as health, morals, family background, welfare of children, etc. (second reading and final passage), bill authorizing closing of schools where troops surround grounds (two votes, on amendment and final passage); and a bill requiring registration of NAACP members involved in school controversies.

Three Dallas members were scored as casting all 11 "yes" (segregation) votes: Representatives Robert H. Hughes, Robert E. Johnson and Joe Pool.

Three others had absences but supported segregation bills when present: Representatives Ben Atwell, 6 yes, 5 absent; John L. Crosthwait, 8 yes, 3 absences; Robert K. Sutton, 10 yes, 1 absent.

Rep. Barefoot Sanders was credited with voting for the local option bill involving state school funds and closing of schools where troops surround grounds. He was credited with 9 nay votes on other ballots.

Sen. George Parkhouse of Dallas was given a unanimous segregation record. He voted for three measures that reached the floor on voice votes and for a fourth that was a record vote.

The record vote was on the NAACP registration bill. Voting for it were Senators A. M. Aikin Jr. of Paris, Neveille H. Colson of Navasota, Culp Krueger of Ellen Temple, Wardlow Lane of Center, Otis E. Lock of Lufkin, Crawford Martin of Hillsboro, William T. Moore of Bryan, George Parkhouse of Dallas, Jimmy Phillips of Longview, David W. Ratliff of Stamford, Ray Roberts of Mckinney and Bill Wood of Tyler. Sen. Ashby Rogers of Childress was paired, but would have voted "yes" as would have Sen. Grady Hazlewood.

Voting votes in addition to those of Dallas members on segregation measures with "yes" meaning a favorable vote, were listed as follows:

(2)

eavy Segregation Vote

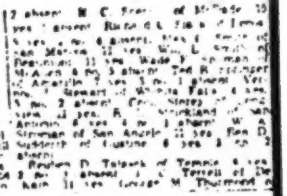
Oscar Laurel of Laredo, 11 yes; no, 1 absent; Leroy Saul of Kress, 9 yes, 6 no, 1 absent; E. F. Sackel of Lee of Kermit, 7 yes, 3 no; Jesse Sasker, 11 yes; A. A. Schwartz of Gal- veston, 1 yes, 9 no, 1 absent; Walter C. Schwartz of Brenham, 10 yes, 1 ab- sent; Fletcher Seelbach of San Antonio, 2 absent; R. C. Sherrill of McDade, 10 yes; Richard C. Slack of Perrin, 9 yes, 2 no, 4 absent; Max C. Smith of San Marcos, 11 yes; Will L. Smith of Beaumont, 11 yes; Wade F. Spitman of McAllen, 6 no, 5 absent; Ted B. Springer of Amarillo, 7 yes, 3 no, 1 absent; Ver- non Stewart of Wichita Falls, 4 yes, 6 no, 1 absent; Cecil Storey of Long- view, 11 yes; R. L. Strickland of San Antonio, 6 yes, 4 no, 1 absent; W. A. Stroman of San Angelo, 11 yes; Ben D. Sudderth of Gustine, 6 yes, 3 no, 2 absent; Reuben D. Talasek of Temple, 9 yes, 2 absent; R. C. Terrell of De- Kalb, 11 yes; George M. Thurmond of Del Rio, 3 yes, 6 no; Byron Tunnell of Tyler, 11 yes; James A. Turman of Austin, 11 yes; J. B. Walling of Wichita Falls, 8 yes, 3 absent; Murray Watson of Mart, 11 yes; Jack Welch of Mc- Allen, 10 yes, 1 absent; Bob Wheeler of Amarillo, 11 yes; Richard C. White of El Paso, 9 no, 2 present and not voting; Edgar Wilson of Amarillo, 10 yes, 1 absent; Joe Pat Winfree of Browns- ville, 9 yes, 2 no, 1 absent; Sam F. Wolford of Stratford, 9 yes, 2 absent; W. S. Wontsey of Corpus Christi, 1 yes, 10 no; Herman Yezak of Edmond, 8 yes, 1 no, 1 absent; C. Zivanek of Dalhart, 10 yes, 1 no.

Oscar Laurel of Laredo, 11 yes; no, 1 absent; Leroy Saul of Kress, 9 yes, 6 no, 1 absent; E. F. Sackel of Lee of Kermit, 7 yes, 3 no; Jesse Sasker, 11 yes; A. A. Schwartz of Galveston, 1 yes, 9 no, 1 absent; Walter C. Schwartz of Brenham, 10 yes, 1 absent; Fletcher Seelbach of San Antonio, 2 absent; R. C. Sherrill of McDade, 10 yes; Richard C. Slack of Perrin, 9 yes, 2 no, 4 absent; Max C. Smith of San Marcos, 11 yes; Will L. Smith of Beaumont, 11 yes; Wade F. Spitman of McAllen, 6 no, 5 absent; Ted B. Springer of Amarillo, 7 yes, 3 no, 1 absent; Vernon Stewart of Wichita Falls, 4 yes, 6 no, 1 absent; Cecil Storey of Longview, 11 yes; R. L. Strickland of San Antonio, 6 yes, 4 no, 1 absent; W. A. Stroman of San Angelo, 11 yes; Ben D. Sudderth of Gustine, 6 yes, 3 no, 2 absent; Reuben D. Talasek of Temple, 9 yes, 2 absent; R. C. Terrell of De Kalb, 11 yes; George M. Thurmond of Del Rio, 3 yes, 6 no; Byron Tunnell of Tyler, 11 yes; James A. Turman of Austin, 11 yes; J. B. Walling of Wichita Falls, 8 yes, 3 absent; Murray Watson of Mart, 11 yes; Jack Welch

(21)

REPORT

akers Record Heavy Segregation Vote



Referendum ... Vote ...
Wednesday ...

Robert Cargill of Tyler ... man of the committee ... voters' records on 11 segregation ... bloc ... taken in the House ... on three votes and one record vote ... of the Senate.

The referendum group sponsored the petition that put segregation issues on the 1956 ballot. Voters approved segregation steps by about 4 to 1. In the legislative session, the committee pushed bills designed to protect segregation.

The 11 House votes in Cargill's report were on: A bill banning NAACP members from school ... from employment; ... votes on ... reading and final passage); a bill cutting off state aid to school districts where integration takes place without local option authorization; bill allowing school board the right of placement of pupils according to educational curriculums and environment of the individual students and allowing parents to withdraw students from integrated schools; bill allowing grants for educational purposes to children where no separate public schools are provided; bill allowing transfer to be based on such factors as health, morals, family background, welfare of children, etc. (second reading and final passage), bill authorizing closing of schools where troops surround grounds (two votes, on amendment and final passage), and a bill requiring registration of NAACP members involved in school controversies.

Three Dallas members were scored as casting all 11 pro-segregational votes. Representatives Robert H. Hughes, Robert E. Johnson and Joe Pool.

Three others had absences but supported segregation bills when present: Representatives Ben Atwell, 6 yes, 5 absent; John L. Crenshaw, 8 yes, 3 absences; Robert K. Sutton, 10 yes, 1 absent.

Rep. Earnest Sanders was credited with voting for the local option bill involving state school funds and closing of schools where troops surround grounds. He was credited with 9 pro-votes on those ballots.

Sen. George Parkhouse of Dallas was given a unanimous segregation record. He voted for three measures that received two dozen or more votes and for a bill that was a record vote.

The record vote was on the NAACP registration bill. Voting for it were Senators A. R. Adam Jr. of Paris, Neveille H. Craig of Navasota, Chip Conner of El Campo, Harrison Lane of George Otto H. Lock of Lufkin, Gardner Morris of Jacksboro, William T. Moore of Bryan, George Parkhouse of Dallas, James Phillips of Angleton, Darrell W. Ranft of Mansfield, Ray Roberts of McKinney and Bill Ward of Tyler. Sen. Andy Rogers of Cherokee was paired. [illegible] would have voted yes, as was [illegible] already had record.

House ... addition to those of Dallas members on segregation measures ... votes ... ing a favorable ... were ... as follows:

[illegible]

Supreme Court of the United States

No. 72-147

Bob Bullock et al.,

Appellants,

v.

Diana Regester et al.

APPEAL from the United States District Court for the Western District of Texas.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 10, 1972

FILED
FEB 6 1973

APPENDIX
(Pages 125-502)
VOLUME 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-147

JOE DOLLACK, et al.
versus
ALLEN HAUGHTON, et al.

FRANCES SMITH, et al.
versus
JOSEPH MARKOFF, et al.

FRANCES SMITH, et al.
versus
THE HONEY BRUNER, JR., et al

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

JOHN L. HILL,
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LEONARD J. JONES
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Spl. Assistant Attorney General

PROBABLE JURISDICTION noted March 26, 1973

CERTIORARI GRANTED October 10, 1972

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

* * * * * * * * * * * * * * * *

RECORD OF PROCEEDINGS

* * * * * * * * * * * * * * * *

CURTIS GRAVES, ET AL, Plaintiffs	X X X	
Vs.	X	NO. A-71-CA-142
BEN BARNES, ET AL, Defendants.	X X	
DIANA REGESTER, ET AL, Plaintiffs,	X X X	
Vs.	X	NO. A-71-CA-143
BOB BULLOCK, ET AL, Defendants.	X X	
JOHNNY MARRIOTT, ET AL, Plaintiffs,	X X X	
Vs.	X	NO. A-71-CA-144
PRESTON SMITH, ET AL, Defendants.	X X	
VAN HENRY ARCHER, JR., Plaintiff,	X X X	
Vs.	X	NO. A-71-CA-145
PRESTON SMITH, ET AL, Defendants.	X X	

* * * * * * * * * * * * * * * *

HEARD AT: AUSTIN, TEXAS

ON: December 3, 1972

VOLUME: I

A P P E A R A N C E S:

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STATE OF TEXAS ET AL

CIVIL ACTION NO. A-71-CA-145, VAN HENRY ARCHER, JR., ET AL VERSUS PRESTON SMITH ET AL

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Lawyers Committee for Civil Rights Under Law
Washington, D. C.

ATTORNEY FOR AMICI LAWYERS
COMMITTEE FOR CIVIL RIGHTS AND
LEAGUE OF WOMEN VOTERS

BE IT REMEMBERED that heretofore, on the 3rd day of January, 1972, before a panel composed of the HONORABLE IRVING L. GOLDBERG, Judge, U. S. Court of Appeals, Fifth Circuit, HONORABLE WILLIAM WAYNE JUSTICE, U. S. District Judge, Eastern District of Texas, and HONORABLE JOHN H. WOOD, JR., U. S. District Judge, Western District of Texas, the above consolidated civil actions came on to be heard, at which time the following proceedings were had:

AUSTIN, TEXAS

JANUARY 3, 1972

FIRST DAY OF TRIAL

JUDGE JUSTICE: Please be seated.

JUDGE GOLDBERG: Good morning, ladies and gentlemen.

We have for hearing this morning a hearing on consolidation of four cases, A-71-CA-142 in the Southern District of Texas, Houston; A-71-CA-143, Eastern District, Tyler Division; A-71-CA-144 from the Northern District, Dallas Division; and A-71-CA-145 from the Western District of Texas.

I would first like to express my appreciation to all Counsel and everyone else who has cooperated in bringing this case to hearing this morning. Everyone has recognized that time is a very, very important factor. I want to say on behalf of all the Judges, three of us here, that we come here without any pre-judgments or preconceptions. We implore you to be as economical and as expeditious in the presentation of your case as is possible for the very simple reason that we are under a time

schedule, and while no one has made up his mind in any degree, it is almost inevitable -- I would say it is inevitable -- that at the conclusion someone might be disappointed or grieved at whatever judgment is finally entered in this case, and I seek the unanimous opinion of the three of us but whatever that judgment is, and whoever may be aggrieved in the process of that judgment, that that party have ample time to get to the Supreme Court in order to rectify or to change any error that may be charged against this three-judge court, and that is the primary reason why time is of such essence in this case.

Judge Wayne Justice has been the Managing Judge, so to speak, of these cases. He is very familiar with what has gone on before, and for that reason I am going to ask him to be the Administrator of these proceedings, knowing from his experience, we will be able to act more expeditiously, and with that preliminary statement, I now ask Judge Justice to proceed with the hearing.

JUDGE JUSTICE: Thank you, Judge Goldberg.

Are the parties ready to proceed in

the Houston Division case?

MR. NELKIN: Your Honor, Stuart Nelkin for the Plaintiff. Mr. Curry and I are about 30 seconds away from assembling the final amendment to the Pretrial Order which lists the exhibits, and other than that, with the same reservation of keeping our record open since we haven't read the depositions, we are ready to proceed.

MR. CURRY: That is our position, Your Honor.

JUDGE JUSTICE: Do the parties desire to make an opening statement, or are you content with what has been done in stating your position in the Final Pretrial Order?

MR. NELKIN: We will waive opening statement.

MR. CURRY: We will also, Your Honor.

MR. McDANIEL: Your Honor, I wonder if in the interest of time and to avoid the necessity of asking permission of the Court, if all Counsel of record might be authorized to quietly leave and enter the courtroom during the trial because we are working on the other cases as we go along.

JUDGE JUSTICE: Yes, try to avoid as much disturbance as possible.

MR. CURRY: Your Honor, we have an associate with Mr. Jaworski and I, that is working with us. He hasn't appeared of record. If we may, we would like to identify him, because he is not here yet, but he is coming. His name is William Young.

JUDGE JUSTICE: Very well.

JUDGE GOLDBERG: We will be happy to have him.

JUDGE JUSTICE: All right, you may proceed.

MR. MELKIN: Thank you, Your Honor.

MR. CURRY: Your Honor, we should make known to the Court that Mr. Melkin and Mr. Berg, as well as ourselves, have some exhibits on their way. We have identified them and they have been numbered, but they haven't arrived. Some are coming from Houston and some are in the Capitol Building, but they do appear as a part of the Pretrial Order.

JUDGE JUSTICE: As long as they do appear and have been identified and we know what they are and each side knows what they are---.

MR. CURRY: Yes, sir, and the appropriate objections, if there were any objections to be made, have been made. 1

JUDGE GOLDBERG: Thank you.

JUDGE JUSTICE: Very well. Please proceed.

MR. MELKIN: Your Honor, Plaintiffs call Professor Richard Murray.

JUDGE JUSTICE: Professor Richard Murray, come forward, please.

Raise your right hand and be sworn.

(REPORTER'S NOTE: The witness was duly sworn.)

JUDGE JUSTICE: Professor Murray, please be certain to keep your voice up.

MR. MELKIN: Your Honor, I understand the procedure to be (indicating)---.

JUDGE JUSTICE: Yes, conduct your interrogation from the lectern.

RICHARD W. MURRAY, 12

a witness called by the Plaintiffs, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. MELKIN:

Q Please state your full name.

A Richard W. Murray.

Q And how are you employed?

A I am Associate Professor of Political Science at the University of Houston.

Q Do you have any specialty within the realm of Political Science?

A My specialties in terms of teaching and research are in the area of political parties and electoral behavior.

Q And have you in the past had dealings or occasions to deal with the electoral process as it relates to the local area that the University of Houston is in?

A Yes, I have. I have for about six years now been studying and compiling data on the various

elections that have occurred within Harris County, especially at the precinct level. I have presented one paper relative to that and am at the present time working on a chapter in a book that hopefully will be published next year on electoral behavior in Harris County.

Q Could you tell the Court your education?

A I have a Bachelor's and Master's Degree in Government from Louisiana State University and a Ph.D. from the University of Minnesota in Political Science.

Q And how long have you been an instructor or professor?

A Six years.

Q Has all that been at the University of Houston?

A Yes.

Q Have you had the occasion to publish any books or portions of books in this area?

A I am the co-author of a book called Texas Politics published by Harper and Rowe last year.

(No omission here.)

DIRECT EXAMINATION - Murray

MR. NELKIN: Your Honor, we submit this witness is a qualified expert in the electoral process of Harris County and we would request the Court so qualify him.

MR. CURRY: May it please the Court, we don't know what questions he will be asked and therefore we would not know whether or not he is qualified to answer on a particular issue.

JUDGE GOLDBERG: You have the right to object to specific questions.

MR. CURRY: Thank you.

JUDGE GOLDBERG: Proceed.

MR. NELKIN CONTINUES:

Q Professor Murray, in the course of your studies of the electoral process in Harris County could you tell the Court the original sources or types of things that you used to draw whatever conclusions you have drawn?

A Basically, precinct electoral data, the returns of elections since 1956 in Harris County, in the City of Houston, the Houston Independent School District.

Q All right. And, have you also had the occasion to study census tract data?

A Yes, the 1960 and 1970 census tract data.

Q All right. With that background in mind, I

wonder if you might tell the Court-- just give the Court an analysis of the topography of Houston as to where Blacks live in the city, population shifts, income and that type of thing. 15

A Well, in a minute or two, and without the aid of maps, I would say that Houston is a city racially dispersed by population with five major ghettos and a dozen or more small concentrations, and in the recent years it has been more concentration in the Black community, somewhat similar to what happened in Chicago in the early part of the twentieth century. Now, you have a growing Black population, growing more rapidly than the white population, particularly within the inner city part of the city, that is becoming relatively homogeneous; the older Black ghettos and all are moving together and the Whites are moving out from the center of the city, from the center of the county and to the outlying suburbs. Now, there is a smaller Mexican-American minority within the city of Houston, but it is the most rapidly growing section in terms of ethnicity. It more or less is wedged in between the largest concentration of Blacks. Also, it is located in the central city part of Houston-- primarily located. It is more dispersed, still, in the sense that there are no census tracts that are entirely Mexican-American within the city of Houston.

MR. NELKIN: Your Honor, at this time we

offer into evidence without objection, pursuant to the pretrial order, Plaintiffs' Exhibits 18 and 9.

JUDGE JUSTICE: In order that the record may reflect what the situation is here, any exhibit which is listed in your final pretrial order to which no objection has been made in the final pretrial order is now received in evidence, so it won't be necessary to tender them in each instance.

MR. CURRY: Should we, then, make our objection at this time and call it to the attention of the Court?

JUDGE JUSTICE: Yes, you should. If there has been an objection made in the final pretrial order please call it to the attention of the Court.

MR. CURRY: What exhibits are these?

MR. NELKIN: They are 18 and 9.

MR. NELKIN CONTINUES:

Q Dr. Murray, you had stated that you were without the assistance of maps, and that was really my fault. What we have here in evidence is a Harris County census tract map. We also have the lines of the present senatorial districts in Harris County as they have been enacted into law with the appropriate numbers, and we also have shading which simply reflects the shading of the bureau of the census information as to poverty areas in Houston. Now, could you

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enlighten the Court as to the location of the Black city or Black Harris County dweller?

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A Well, there is a very high difference, of course, between the Mexican-American population in the shaded or poverty areas that are displayed on the map. In fact, there are probably only six or eight census tracts that are predominantly Black that are not shaded and there are a very few Anglo census tracts that are shaded, so as a rough blueprint of the poverty areas, or the minority areas, or the minority areas in Harris County-- not without a few exceptions, but generally.

Q All right. Now, I would like to also have your comments--

JUDGE GOLDBERG: How many senators are from Harris County?

A There are four senators in the present legislature, and a portion of the county is included in Senator Schwartz's district. Under the reapportionment plan there will probably be five senators elected from Harris County. Four districts are entirely within the county, a fifth senate district is five-- six Harris and one-- six Fort Bend Bend County. And, Schwartz retains-- or the Schwartz district-- retains a small slice. So, five, roughly.

MR. MELKIN: Your Honor, for clarification, this is also a senate district.

JUDGE JUSTICE: Would it assist you in the

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presentation of this exhibit to have the witness down by the exhibit?

MR. NELKIN: Not at this time. I think I might like to call him down later.

JUDGE JUSTICE: All right.

MR. NELKIN: I don't know if you can see that number, we neglected to put it in, but that is Senate District 13 as enacted by law.

JUDGE JUSTICE: Keep your voice up, please.

MR. NELKIN CONTINUES:

Q Now, could you also, Dr. Murray, based upon your study of census tract information give us an analysis of housing patterns within Harris County. That is to say, owner-occupied versus renter-occupied?

A I think the pattern in Harris County is a similar pattern to every metropolitan area in the United States, and I think the city primarily has the highest portion of deteriorated, dilapidated housing. By the census the outlying areas become more owner-- owned housing, proportionately with higher median value of the houses, higher rent, where there are rental units, fewer dilapidated houses, fewer dilapidated houses. Of course, the poverty areas as shaded on the map are the areas that have the highest proportion of renters, the most dilapidated or deteriorated housing.

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Q I would like, if I could, now to go into an analysis of voting patterns in Harris County. And, I would like for you, if you could, to deal with the question of registration, level of registration participation in primaries, general elections and that kind of thing and distinguish between Blacks and Whites in Harris County.

A All right.

MR. CURRY: Your Honor, we would object to his statement at this time based on-- there has been no predicate layed for the purpose of qualifying him to know the patterns of the vote registration and the participation in the legal process.

JUDGE GOLDBERG: Did he testify that he had studied the registration process?

A I am currently working on a chapter-- a book that is dealing explicitly with that problem.

JUDGE GOLDBERG: Overrule the objection. Proceed.

MR. HELKIN CONTINUES:

Q Please proceed, Dr. Murray.

A Okay. Within the Black community, first things first, registration, approximately sixty per cent of the adult Blacks up through 1971 in recent years have been registered to vote. The average throughout the county is sixty per cent, and in some precincts it is much higher,

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eighty per cent, and some lower. In the Mexican-American community the percentage is considerably lower, forty-five per cent or so. In the Anglo community the most important variable is the socioeconomic characteristics of the area. There are census tract areas in Houston, in the more affluent districts, that have more than ninety-five per cent of the adults registered as voters. There are in the Little York Road area, white blue collar working area, which is about where the six is on the map--

Q Excuse me just one second. Could you come down here and point this out to the Court?

A Generally, most of the Whites live outside the shaded area of the county. On the west side of Harris County you have generally the more affluent Whites; there are affluent pocket scattered around in other parts of the county. Registration is extremely high in these areas in terms of potential numbers of adults, ninety to ninety-five per cent, generally, which means that in proportion to their population these areas have disproportionate amount of political power. In an analysis that we did in 1970 of four different districts in the city of Houston, one Chicano, one Black, one White blue collar, and one White middle class, all of which had the same population, the white area cast over an average of five elections, forty per cent of the vote the white blue collar area about twenty-one per cent and the

Black area about twenty-two per cent and the Chicano about sixteen or seventeen per cent.

Q Now, is there also some correlation between registration and participation of those registered?

A The patterns are not so stark, but generally, the more affluent white areas have the heaviest participators. However, in recent years black participation has improved. And in the recent election, it was up to the level of the highest white areas, so the difference is registration in terms of black-white, potential political power. Whites are registered to a high degree and tend to vote somewhat heavily although there are certainly exceptions that could be cited to that.

Q All right, now, in your -- incidentally, I might ask, going into qualifications, have you in the past been asked and in fact, have been employed by a particular TV station in Houston to make election analysis profiles?

A Yes, sir. I think I participated in four such elections.

Q For what station?

A KHOU.

Q And in the course of your activities there, you take the recent returns and make an analysis of the election?

A It is a conventional precinct profile analysis.

Q How accurate have you been, for instance, in

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the last major election?

A Well, we were very accurate there. We were able to project the exact percentage.

Q Based upon a return of how many precincts?

A 16.

Q How many precincts are there in Harris County?

A In the City of Houston, there are 245.

Q Now, have you also been able to discern with respect to general elections, special elections, primary and how they distinguish from one another?

A The thing that has most impressed me about looking at the Black-White voting patterns, has been that there are, in fact, two patterns that need to be distinguished. Especially with respect to the white electoral behavior when a Black candidate is on the ballot. One pattern emerges when you have City and School Board elections and a second and distinct patterns emerges when you have State Legislative elections.

Q Could you tell us what these two patterns are?

A Well, if we are concerned with the variable of white support for a Black candidate -- a vote that a Black candidate can get in Black areas, in City and School Board elections Black candidates get their strongest share of the vote in the affluent middle-class areas.

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Q Which would be characterized on this chart as --

A -- well, generally Southwest Houston, West Houston, the outer fringes now of the county that are being developed.

Q All right.

A For example, when Representative Graves ran for Mayor in 1969, his strongest showing was in Southwest Houston.

MR. CURRY: Your Honor, I don't want to be pretentious, but we had rather be be limited to responding to the questions that are asked.

JUDGE GOLDBERG: This is before the Court and we will allow some latitude, but let's try to keep our questions as harmonious as possible to make the case, -- what you really have to bring out to make the case.

By Mr. Belkin:

Q All right. Now, that was the pattern of white Harris County voters for Black candidates in City and School Board Elections?

A Yes.

Q Okay. Now, what about the pattern with

respect to white support for Black candidates in State Legislative elections?

A Well, you generally find the reverse, that in the more affluent or middle-class areas, support for Black candidates is lowest and Black candidates do best in heavily labor, than say white areas. Areas wherein City and School elections get very, very few votes for Black candidates. Now, I think this is a private finding which you have here two sets of issues that tend to come out in these type of races and it is not anything that unique to Houston. City and School Board elections bring out issued like housing, integration of the schools, and so forth that elicits different kinds of reasons than you get in legislative elections, where economic -- particularly in this State and particularly in Harris County seems to be the most important predictor in white electoral behavior.

Q Are you saying voting breaks down according to economic lines with respect to Senate and House elections?

A Very much so. Especially in the white community. The Black community tends to generate votes uniformly and of course, there are distinctions within that community by economics. But wealthy white areas and poor black areas tend to vote alike, but economics is a terribly important determinate.

Q Now, one other particular point I would like to make with regard to the distinction is the matter of the slate versus the one to one vote. Could you tell the Court the voting patterns in Harris County where a Black is part of a slate, as opposed to his chances where he runs in a one to one?

A Well, when a Black is running in a multi-member situation where a slate can be formulated that has a number of candidates and a Black can run as one of a team, his vote goes up considerably and in this area, you usually have a coalitional type of politics wherein seemingly the coalition voters are willing to vote for a Black if he is part of a team. The Blacks have generally been successfully in Houston in such slates. And in one to one situations, the voting takes on much stronger racial overtones. The whites there tend to vote for the white and Blacks very strongly tend to vote for the Blacks.

Q All right. And it is true, is it not, that in Harris County, persons running for State Senate positions run in single member districts?

A Yes. Of course, all State Senators in this State do.

Q Excuse me one second. Dr. Murray, as part of the uncontested facts in this case, the parties have agreed

that certain named persons who are Blacks have been elected to public office in Harris County and the persons that we have agreed upon are Barbara Jordan, Senator, District 11, 1966-68 by special election and then 1968 to 1972, unopposed. We also agreed with respect to Curtis Graves, Representative of District 23, 1966-68 term, 1969-1970 term and elected unopposed in 1970-72 term. Leon Everett, Houston Independent School District, Board of Trustees, 1969-1972 term, City wide election. Herman Barnett, again the Houston Independent School District, '71-74 term, City wide election and Judson Robinson, City Council, District B, 1972-73 term, City wide election. We have also agreed with respect to two Chicanos, Leonardo J. Castillo, City Comptroller in the 1971-72 terms, City wide election, and David Lopez, Houston Independent School District, Board of Trustees, 1972,-1975 term. Now, I would ask that inasmuch as these are undisputed facts, if you could, if you would make an analysis of these particular elections where Black -- where minority group members have been elected and see if it fits within your analysis of slate and the other distinctions that you have made.

A Representative Graves was elected in 1966 and has been reelected as a member of the six man slate representing a House Legislative District in Northeast Harris

County, a District that is far more than one-sixth Black, but does not have a white majority. The slate included a Mexican-American, and four whites who lived in various parts of the district. Herman Barnett and David Lopez were recently elected as members of a Citizens for Good Schools slate, which is a semi-political party which has merged for school elections in Houston, along with a white -- I guess liberal doctor, Everett, who was elected two years ago on the CGS slate, running with three whites.

Q Were there in those particular school board races other Blacks and Mexican-Americans who ran who were not part of the slate?

A Many candidates, particularly in the last election.

Q All of whom were unsuccessful?

A Yes. They did very poorly.

Q Now, with respect to Judson Robinson, City Council, District B, were there some particular circumstances about that race?

A Well, of course, he ran two years ago, was defeated in the city-wide election. The city is a lot blacker than the county in terms of its population, and it is a lot browner than the county. It is a more favorable electorate, and Robinson was a well-known candidate, ran against an aging incumbent and defeated him with a substantial share of his vote coming from affluent whites in Southwest Houston.

Q With regard to Barbara Jordan, we will reserve on that and come back.

Now, I want to move into, if I can, the old Senate District 11 in Harris County, which you know to be Barbara Jordan's old district.

MR. NELKIN: Your Honor, Plaintiffs' Exhibit 16 is listed on the Pretrial Order. There are reservations by the Defendant with respect to his right to contest the accuracy of the way the lines are drawn, as well as the accuracy of particular cross-hatching which represents over 50 percent black census tracts.

MR. CURRY: May it please the Court, 31
our position on that is that Counsel represent to us it is accurate. The census reports for the area will be part of the record, and rather than go to the trouble of confirming it, we just simply reserve the right, so ultimately if there is any inaccuracy, it will be shown in the record.

JUDGE GOLDBERG: Appreciate that.

Q Dr. Murray, it is correct, is it not, that this particular senate district represented by the number eleven was, in fact, is the only senate district in Harris County that has ever elected a black person to the Senate?

A That's correct.

JUDGE JUSTICE: Hold it up for him, Mr. Carl.

(REPORTER'S NOTE: The law Clerk complies.)

Q Now, if we could, I would like to begin with respect to these old district lines. By your analysis of the community of interest, the homogeneity characteristics of both Senate District 11 and the other districts.

A Well, there is considerable variation in some

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of the districts. Eleven, I think, is one of the more homogeneous ones. If you look at something like median income in that district, there is not enormous variation by census tract.

JUDGE JUSTICE: Could you speak a little louder, please?

A District 11 contains a substantial black population, somewhat less than 40 percent, but a large black population. It contains a substantial Mexican-American population, probably around 12 percent or so, and the remainder being white. That part of the county in District 11 where the Anglos live is a generally blue-collar labor area and rural fairly low income area.

So, in economic terms I think there is a pretty high degree of community interest across racial or ethnic lines in District 11.

Q With regard to the location of the Chicano community, could you just tell me when to stop with my hand (indicating)?

A Well, it would be down at the bottom fringe basically and a little bit above that, right there (indicating).

Q And are the blacks again within this particular district---.

DIRECT EXAMINATION - Murray

Well, of course, the cross-hatching, as I have represented to Counsel, represents over 50 percent black census tracts.

What about these white areas also included in District 11? Do those also contain substantial black minorities?

A No, not in most cases. There are some blacks in every tract in the central city area, but not in great numbers.

The white of the unshaded crossed tracts of the central city are heavily Mexican-American, and the outlying tracts generally have very few blacks or very few Mexican-Americans in them. They don't have that many people either. At least, they didn't in 1960. It was a relatively lightly populated area.

Q Now, these figures are based upon 1970 census tract figures. Is that correct?

A Well---.

Q Well, it is. The cross-hatching is based upon 1970 census figures.

Now, can you go back to the period of time when this particular district was drawn? Can you give us the year then?

A I would say '65.

Q And could you tell us if upon your analysis of the demography of the area based on the 1960 census tract figures that particular district was a guaranteed black district?

A No.

MR. CURRY: Your Honor, we are going to object to that primarily on the basis that the question calls for his testimony based on 1960 census figures, which we say would be necessarily inaccurate and therefore would be a conclusion on his part, and it is too remote. We object to that.

MR. HELKIN: Your Honor, if I might be heard on that, there is no census information that I am aware of that existed when these lines were drawn, other than 1960 census tract information. This is what was available to the people who drew the map.

JUDGE COLEMAN: This is before the Court, and we will let it in, and we will consider its relevancy and competency.

JUDGE JUSTICE: You may proceed.

MR. HELKIN: All right.

A No, I don't think it was a guaranteed

district that would elect a black. I think there was a good chance that it would elect a black. That is all one can say. The district did not have a black majority.

Q And, in fact, Barbara Jordan, who wins this particular district had run in Harris County before, had she not?

A Yes, she had run county-wide in 1962 and 1964 on a liberal slate for the Legislature, was defeated both times, running moderately close races.

Q Now, with regard to other than -- well, you said economic, and when you say economic, I presume you are including both median income and housing patterns. Is that correct?

A Right.

Q Now, is there anything that could be added by an analysis of precinct returns for the past ten years that you have analyzed -- the past six years?

A With respect to that district?

Q Yes, as to its homogeneity.

A Well, precincts very generally vote together. In that senate district, for example, in 1968 Don Yarborough carried every precinct, white, black, brown. Ralph Yarborough carried all but the Crosby precinct and Highlands -- Ralph carried all but eight, I think, of the outlying

areas, but it is generally an area where in legislative races, blacks, whites, browns vote together. Race, of course, introduces a new variable.

JUDGE JUSTICE: So that the record may reflect the significance of these posts of the two Yarboroughs, would you state what their political coloration was?

THE WITNESS: Liberal Democrats. That is a district that can very fairly be characterized as a strongly liberal Democratic district.

Q And is that a general pattern of black voting in Harris County?

A Yes, blacks in Harris County in recent years have almost invariably voted for liberal Democrats.

Q Thank you.

Now, with respect to Plaintiffs' Exhibit No. 11 in evidence, we now have before us the new lines that have been drawn as compared to---.

JUDGE JUSTICE: Hold this up for him, Mr. Shelton.

(REPORTER'S NOTE: Mr. Shelton complies.)

Q As compared to the old senate lines, and I would like to get your ideas on a comparison of these two particular formations with regard to the various types of things that go into drawing districts in any particular governmental entity---.

MR. HELKIN: Now, I am not exactly sure how to deal with this, Your Honor. We have taken a deposition of a Mr. Bob Spellings, and I understand it is now available this morning, although I haven't seen it. Mr. Spellings, who testified that he drew this map, which constitutes the present Board Districts, testified as to the various factors that he utilized, and I can represent to the Court based upon my notes, those are the factors that he used, and I would like to question Dr. Murray about whether or not this map is a working example of utilization of those particular principles.

JUDGE JUSTICE: You say this is in his deposition?

MR. HELKIN: Yes.

JUDGE JUSTICE: You represent to the Court that the factors that you are about to

ask about are included in his deposition?

MR. MELAIN: Yes, sir, Your Honor.

JUDGE JUSTICE: All right, you may proceed.

JUDGE GOLDBERG: And the other side, of course, will have the opportunity to verify and challenge---.

MR. CURRY: Thank you, Your Honor, we also haven't had an opportunity to read the deposition.

JUDGE GOLDBERG: Certainly, I understand.

BY MR. MELAIN:

Q Now, Mr. Spellings, Dr. Murray, testified that he used what he termed the core concept to draw the present senatorial districts and when he explained the core concept, he stated that he would go to the center of urban population and then he would move outward from that adding census tracts to make up appropriate numbers.

He did not remember in what direction he had gone when he drew Harris County from the center of the city, and he did not remember when shown a reduced version of this map, as to where the center of the city is, and I wonder if you might point out to the Court as best you can, first of all, where the center of Harris County is, and

I might mark that on the exhibit.

JUDGE WOOD: I think, Counsel, for the record you better identify the exhibit you are talking about.

MR. HELKIN: Beg your pardon, Plaintiffs' Exhibit 11.

A Well, the population center of the City of Houston is a little south of downtown and slightly west so it is near the confluence of Districts 6, 15 and 11, so just trace the -- it is a little south of there (indicating), right about there.

(REPORTER'S NOTE: Counsel indicates on exhibit.)

A Probably a little farther west.

Q O. K. If the record might reflect, I have placed a black X where Dr. Murray has indicated the center of Harris County urban population is approximately located.

A It is about an inch from there.

JUDGE GOLDBERG: You say that is the center of urban population in Harris County?

THE WITNESS: It is a little west and south of there.

Q Through here (indicating)?

A That would be more closely accurate.

The county's urban population, of course, is concentrated in the south central part of the county.

Q Now, if Mr. Spellings were to have used the core concept, does this particular map indicate that that occurred?

A Well, I have only an opinion. My opinion is in terms of the four -- if you look at all four districts, yes. I mean they cut in and out the core up and you build out from the core for the four districts. Clearly there is no -- seems to me -- there is no indication that there is a core district created, such as we saw in Congressional districting.

Q The fact of the matter is that when Mr. Spellings -- and again I represent to the Court -- testified the use of the core concept was based upon a theory that the core had a greater community of interest than outlying areas, would it not have been appropriate to have included all of the core in one senatorial district?

MR. CURRY: Your Honor, we will object to whatever appropriateness calls for. We can't see that that specifically is in issue in this case.

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MR. MELKIN: Your Honor, we are attempting to determine the reasons behind the map which, in fact, destroys the core of Harris County when the person who drew the map testifies that the thing he was trying to do was to preserve the core.

JUDGE GOLDBERG: This involves some legal questions and legal opinions, which I take it the Court would have to reserve and settle ultimately, but anything that he wants to say with respect to what constitutes the core or how a core might be used, but any legal conclusion, I think perhaps, that will be left to the Court.

MR. MELKIN: I appreciate that, Your Honor.

BY MR. MELKIN:

Q With that particular framework, could you comment on the destruction of the core by the method in which this map has been drawn?

A Well, if you mean by the core the inner city, and we mean by that what the Census Bureau takes as the inner city of Houston, which is the 50 old census tracts

that existed in 1948. It is an area that contains about 411,000 people, and they are divided between three senate districts under this plan, in contrast to the Congress plan where they are almost entirely included within one congressional district.

Q Again, the Congress plan for Harris County?

A For Harris County.

Q Now, I would like to have you comment, if you could, on the -- of course, community of interests may be a legal term, but the similarity of economics, the similarity of voting patterns of the persons who live in what the new senatorial districts are. Let's take, for instance, District 15 now.

District 15, as we see, moves across and into the core. Does it also include a very affluent area?

A Fifteen is the most heterogeneous of the senate districts. It includes the census tracts, like River Oaks census tract, that has the highest median home value. It includes also some of the poorest census tracts by whatever measure is used, deteriorated housing, dilapidated housing, and it includes a number of white middle class areas. It includes a number of aging white areas, generally low income. It is a polyglot district. I would not characterize it as having any community of interest as

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that term is normally used in socio-economic, racial or ethnic---.

(No omission here.)

Direct Examination - Murray

Questions by Mr. Nelkin:

Q Isn't it true, Dr. Murray, that the western part of District 15 includes a suburb which is one of the wealthiest in the nation and the eastern part of the county contains what has been classified by the Bureau of Census as the poverty area?

A Yes.

Q Now, with respect to voting patterns, is there a similarity in voting patterns on state legislative races: the people on the west and the people on the east?

A The one side of the district will vote in complete opposition to the other side in almost every election that can be analyzed.

Q All right. And, when you say that you are saying that the western part would vote in a very conservative fashion and the eastern part would vote in a liberal Democrat.

A If the race could be defined as liberal versus Democrat-- conservative. If that becomes the, say, the initiative, the western is conservative and the east is liberal.

Q All right. Now, with respect to the old senate districts, where--

JUDGE GOLDBERG: What is this exhibit number?

MR. NELKIN: Number 16.

MR. NELKIN CONTINUES:

Q Where do we find the River Oaks area?

A It is included in Senate District 15 which, while it has what I think is a gerrymander, it has a total that reaches over and reaches five Black precincts farther down, right there. It is a district that is overwhelmingly White, affluent, conservative, votes heavily Republican in general elections, it is strongly conservative in Democratic primaries-- much more so than the new district 15 which includes substantially more liberal strength-- although I think realistically a minority.

Q That was the next question I wanted to ask you; with relation to these two diverse groups within here, how would you characterize their strength with respect--

JUDGE JUSTICE: For the record, which exhibit are you--

MR. NELKIN: I beg your pardon, this is 11, and I am referring to Senate District 15 within-- the population divergence within that particular district.

MR. NELKIN CONTINUES:

Q How would you characterize the relative voting strength based upon registration and all the other factors you have considered?

A I think it is a district that we could say tends to be conservative, a fairly strong tendency to be conservative. There would be an outside chance, if the personality issues were right, that, say, that a liberal could win in the Democratic primary there-- an outside chance of the primary there-- a Democrat in the general election. But, I think it is a district that should go conservative in the Democratic primary, and probably a conservative Democrat would defeat a Republican in the November election.

Q Now, with regard to Senate District 11 on Plaintiffs' Exhibit 11, could you characterize the similarity of the people, economically, and voting preference?

A Well, it is closer than District 15, but there is still a good deal of disparity. The 11 comes around and takes in the biggest slice of the inner city and it has the heaviest Black population, about thirty-seven per cent. But, the part of the district on the east side reaches down into Pasadena and beyond all the way to the TeNasa area, entirely White, tending to be white collar, some blue collar working class, but considerably middle class components in that area and also has a substantial Mexican-American population. So, in comparison to the old District 11, I would say much less community of interest.

Q And, that would be economics. What about voting patterns?

A Well, again, in the old District 11 you find in most elections the precinct voting together. In this one you will find a substantial minority that will deviate.

Q All right. Now, with regard to Senate District 13 as it is principally constituted, and we are looking at it on Plaintiffs' Exhibit 11, we have a district which stretches from a southeast portion of Harris County all the way around the city or the county to the southwest, can you describe the homogenetics of that particular district?

A Well, it is racially fairly homogeneous. It is a very heavy White district, but in terms of economics, which I again think is terribly relevant to voting behavior in state elections, it is very homogenetic. The east side of the district is pretty heavily working class and tends to be liberal democratic. The west side is strongly conservative and tends to be Republican in the general elections. And, I think you will find that one side of 13 is going to vote in opposition to the other side-- in most elections.

Q All right. Now, with regard to Senate District 6 as it is presently constituted in Exhibit-- on Plaintiffs' Exhibit 11-- can you describe again the concept of the portion of the core as it relates to rest of the district?

A Well, you could pattern 6 as the pattern of the other four districts that touch the core. You have a minority of the district that is made up of the inner city

core, which is generally the poorer segments of the population, and it stretches out to include more affluent suburban census tracts. 6 is a more homogeneous district than most, however, I would say the pattern is there; it is just less pronounced, in my opinion.

Q Could you tell us, sir, the percentage of black persons who live in Harris County?

A About twenty per cent.

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Q All right.

JUDGE GOLDBERG: 20 percent.

A 20 percent.

JUDGE GOLDBERG: Go through each of the Districts there and tell us what the percentage of Blacks is in each District. Do you have there --

MR. HILKINS: Your Honor, we have that. There has been an ojection lodged to that portion of that chart, and we might as well deal with that. Professor Murray, in response to what I thought was an appropriate offer of proof, has prepared what he considers to be the perfect plan or an appropriate plan for Harris County, taking into consideration the types of things that Mr. Spellings, for one, said were appropriate to consider. We have got here a comparison of Black percentages by Board District and proposed district. The Defendants have objected to the question of the proposed district on the basis of relevancy. And, since we are -- Well, I am really at a loss how to move here, because this trial is going to end and others are going to start, and I have Professor Murray here and I would like him to explain the plan he drew.

Direct Examination - Murray

JUDGE GOLDBERG: Continue subject being instructed --

MR. HILKIN: Thank you, Your Honor. Your Honor, we are now looking at Plaintiffs' Exhibit A.

Mr. Hilkin continues:

Q Dr. Murray, I would like you to read, if you could, or just tell us the percentage of Blacks in these various Senate districts.

A Well, in the little tiny portion of the southeast corner, that goes into Galveston County, and other counties with almost no Blacks.

JUDGE WOOD: What precinct number is that?

A That would be 17.

JUDGE WOOD: All right.

A And only 70 Blacks out of 25,000 people.

JUDGE JUSTICE: I didn't hear that answer. What was the question and the answer?

MR. HILKIN: The question is Judge Goldberg's of Black percentages in the Districts in Harris County as they are drawn.

A District 13, I think, is what, four percent - I can't see the chart, but, District 11 is 37

percent, District 15 is 19 percent Black, District 7 is 18 percent, District 6 is 23. So, basically, the Black community is generally divided between four Senate Districts and ranging between 18 and 37 percent Black.

Q All right. Now, if we could go back to Plaintiff's Exhibit 16, which would be the 1965 lines. I want now to have you, sir, if we can, an analysis of the relative voting strength of Blacks as compared between this 1965 Plan and the 1971 Plan. Has there been a dilution of Black voting strength?

A I think so.

Q All right. Now, what about percentages; isn't it a fact that the percentages have not changed that much?

A They have not, because, I think, that in the 1965 Plan, they divided the Black community just as the 1970 Plan did. If you will look at the '65 Plan, it cut into the central city and simply divided and disbursed. But, there is one district, District 11, that had a substantial Black population that was included with a white-blue collar labor area and elected a Black Senator. But, I think the Black population was divided in the 1965 plan; there is no evidence that that plan was intended to elect a Black.

MR. CURRY: Your Honor, we object to that

comment. It was not appropriate and we will ask that it be stricken.

JUDGE GOLDBERG: This is before the Court, but it is strictly your opinion and it involves a great deal of opinion and a great many factors, which I am sure the witness would be the first to say, subject to qualification.

MR. MELKIN CONTINUES:

Q So, that the dilution of Black voting strength is not so much a numerical or a percentage dilution as it is a destruction of the homogeneities that existed under the 1965 act?

MR. CURRY: Your Honor, he is an expert witness and some latitude should be given, but I think he is testifying and leading the witness, rather than asking question and I object to his leading the witness.

JUDGE GOLDBERG: Well, he is an expert. He is being led, but perhaps it will save time if we are a little forgiving in this, unless you insist on your objection. I think it would save a lot of time if he could get to --

MR. CURRY: Your Honor, we have no intention

of insisting that at all times he not lead the witness, but some of the questions have been extremely --

JUDGE GOLDBERG: Restate the question, counsel.

MR. MELKIN CONTINUES:

Q Dr. Murray; you have testified that there has been a dilution of Black voting strength by the drawing of these lines, which are exhibited -- or Plaintiffs' Exhibit 11. You have also testified that there is a substantial change in percentages of Blacks in the most populous Black District. My question is, what is the result -- what is your conclusion of those two items, the product of those two items?

A I don't think there will be a Black Senator elected from Harris County in 1972.

Q And, again, at the risk of leading you; isn't it dilution not so much a question of numbers as it is a destruction of the homogenetic --

JUDGE WOOD: Why don't you ask him what causes that? Why do you have to lead him. Ask him what brings this about, this result.

MR. MELKIN: Yes, sir.

A Two things. While the Black percentage in

District 11, say, is roughly the same as it was before, the whites that have been included registered more heavily, voted more heavily -- or at least, I think, share fewer interests with the Blacks that are in the new district 11, perhaps the most important practical political standpoint, District 11 created in 1965, was a new Senate district with no encumbent Senator. District 11, it turns out, while the district retains a number that had a Black Senator, includes an encumbent white Senator; if he has an indication of running for reelection, he has a strong political basis included within the district. And, that in politics, as everyone knows, is the hell of vex in many cases. You have a sitting white encumbent in the new District 11. No condition existed similar to that in 1965 when the only encumbent white Senator was in a completely different district.

Q How, other matters that Mr. Spelling testified to with regard to principles that he utilized included a desire to have compact districts. Would you characterize the Senate District of Harris County as compact?

A Definitely not.

(No omission here)

Q And could you explain to the Court the basis for your conclusions?

A Well, one, I think, is just face validity, the scanning of the map, the districts do not, I think, to almost any observer, conjure up the idea of compactness. They are relatively tortured, twisted, turning, they are not circles, they are not squares, they are not rectangles, and I think those are the shapes we normally associate with compactness.

Q All right. Now, sir, based upon persons who have -- well, do you know the persons who have announced for Senate races with respect to the various districts under the plan which is law and which is shown on Plaintiffs' Exhibit 11?

A Approximately 20 people have publicly announced for the State Senate in Harris County.

Q All right. And of those, would there be a Mr. Lemon and a Mr. Ogg, who have announced?

A Yes. They have announced respectively in Districts 7 and 5.

Q All right. And how would you characterize, based upon your knowledge of the local scene, how would you characterise their politics?

A They are conservative Democrats, members of

the team that has dominated the House of Representatives in recent years.

Q All right. And would you say that based upon these tortured lines that you have testified to, the lack of compactness, the lack of community of interest, and the indication that for instance, 15 does include a substantial portion of the corps, that these lines were drawn to assure the election of conservative Democrats?

A I think that would be the effect; the intent, of course, I cannot testify to, but I think the -- if one had to take a hundred plans that would be constructed randomly and this might be one of them, I think this would be one of the two or three that would be most favorable to the interest of Mr. Ogg and Mr. Lemon.

JUDGE GOLDBERG: With your proposed plan, would it, in your opinion, assure the election of the Black Senator from Harris County?

A No, it would not assure the election in the sense that it would contain the core district, which would be about 43 percent Black and 15 percent Mexican-American and there have been races where these ethnic minorities have not voted together.

JUDGE GOLDBERG: Are you asserting in that conclusion, as you were in the conclusion that the plan as

presently drawn would insure the election of the Conservative?

A I am sure that the proposed plan would give a Black a good chance of winning. I am sure that the existing Board plan that they have come forth with is very, very favorable to the election of Mr. Lee and Mr. Ogg.

Q And with respect to the chances of the Black ever being elected under the Board's plan, what would be your analysis?

A Very, very limited. Very small chance.

MR. MELKIN: Your Honor, Plaintiff's Exhibit 10 is Dr. Murray's proposed plan for Harris County, which, of course, the Defendants' -- which I guess is subject to being stricken -- I would like to leave this up, if I could.

Q And Dr. Murray, again, dealing with the issues of compactness, community of interest, and a desire not to dilute racial voting strength, which I might also represent to the Court Mr. Spellings indicated was an instruction he was under, could you comment with regard to the plan that you have devised?

A Well, since I was explicitly aiming to improve the community interest of the district and not to dilute the racial strength, I think that object was achieved.

The District 13, which is on the left, is almost an entirely white district and generally a middle-class district. Almost all of the precincts within that district almost always vote together. I think District 11 on the other side of the County encompassed both sides of the Houston Ship Channel. It is largely industrialized and largely a white area, but many parts of it are heavily blue collar. It does contain some variations in social economic importance, but I think it is more of a homogeneous district than any proposed under the Board Plan. I think the core district, which is 15 on the proposed map, is a district with high community of interest. It is almost 60 percent composed of the ethnic minorities; the two important ethnic minorities in Houston, and the whites who live in that area, many of whom are -- many of the whites who are in that area are also poor, live in poor housing, deteriorated and dilapidated housing. So Districts 6 and 7 have lower community of interests. I think this, to some extent, could not be avoided. 6 is -- the community of interest in District 6 under the proposed Plan is at least as good, if not better, than the Board Plan and District 7 is probably about the same. So I think there is a substantial improvement in these districts; one perhaps a slight improvement, and one stays perhaps about the same.

Q All right.

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JUDGE GOLDBERG: All right, improvement with respect to what?

Aq Not deluding the ethnic minority strength preserving a kind of -- a central core, preserving the community of interest as defined by the socioeconomic terms. Trying to put people who vote together in the same district and people who seem to share economic interest in the same district and the people who share ethnic characteristics. For example, the Board's Plan devised the Black community into a poor district, I think giving their distributions of the Black community in Harris County -- it would be very difficult unless you did, and especially tortured district to get them all into one. But in our plan, they are disbursed into three districts and I think have a better chance of having a political significant impact.

JUDGE GOLDBERG: In your proposed plan, because of ethnicity, what did you consider?

A Voting behavior.

JUDGE GOLDBERG: With respect to what issue?

A Generally the races which identified with liberals, versus identified conservatives; Benson versus Yarborough in the last Senatorial election, the 1968 Presidential election with Humphrey, Nixon and Wallace. For example, District 6 under this Plan would encompass the

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parts of Harris County that drew the strongest Wallace support.

(No omission here)

JUDGE GOLDBERG: You considered things other than pure ethnicity?

A Yes. That's right. Although that is probably-- or I would say was the major factor. Districts in Harris County based purely on ethnicity would draw some unusually shapped districts.

JUDGE GOLDBERG: Under your theory, is there anything inherently wrong with that?

A I think compactness and community of interest are also values that have an important place.

JUDGE GOLDBERG: More important than ethnicity?

A Well, just contiguousness would be destroyed, and I don't think that could be permitted because the Black community, for example-- there are still pockets which are White separated from others. They cannot possibly be reached except by drawing corridors and creating obvious gerrymanders to include them into one district.

JUDGE GOLDBERG: Now you talk about gerrymander now a gerrymander, I think under your proposed plan, would be permissible to include ethnicity but would be disapproved when it is directly thought otherwise?

A Well, of course it is my opinion, which is not very important--

JUDGE GOLDBERG: --Well, you have a proposed

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plan here and I want to find out the basis upon which you propose the plan. I want to know the components that went into it. You have talked about--

A --The basic components, to begin with, was to draw a core district.

JUDGE GOLDBERG: A core district?

A Right.

JUDGE GOLDBERG: A core district, to you, would mean more than ethnicity?

A It would be a district that would be primarily defined by ethnicity and secondarily by economics and geography.

JUDGE GOLDBERG: But in order to achieve the core result, you used what has come to be a bad word-- you would think that a gerrymander would be legally and constitutionally permissible, although that is a legal question-- you have proposed a plan here and I want to know if these other factors entered into it?

A Factors such as?

JUDGE GOLDBERG: There is a gerrymander here in order to-- in order that the core district have a representative. Is that correct?

A Yes. In that the district includes only the

core but the ethnicity of the representative is not guaranteed under the core district. It could be a White person, but it would certainly be a person who lived within the central city area. Of the twenty announced candidates, not a simgle oneof them lives within the central city of Houston. In all doubt, they will file, but--

Questions by Mr. Nelkin:

Q Dr. Murray, with respect to tortured lines, you and Judge Goldberg have been talking about tortured lines to insure some homogeneous characteristics with regard to ethnicity. Would you characterize the four districts as they currently exist and are displayed on Plaintiffs' Exhibit 11 as tortured lines?

A I so testified.

JUDGE GOLDBERG: My problem, if I may interrupt here, if this witness proposes a plan in order to give the core group representation and in order to do that he has to torture the lines, what is wrong with it?

A Well, no torture is necessary here.

JUDGE GOLDBERG: Suppose one was?

A Well, if that was my intention, I would torture them, I suppose.

Questions by Mr. Nelkin:

Q Dr. Murray, you have not tortured the lines in

Harris County?

JUDGE GOLDBERG: What do we mean by "torture"? Let's get down to some definitions.

Q Dr. Murray.

A Well, I think districts that are, to use common language, odd shaped, peculiar, that stretch and bend and twist, pick up and pull together areas that are geographically scattered.

JUDGE GOLDBERG: Do you think there is a terrible distortion between these two on your definition of "tortured" or "distortion"?

JUDGE WOOD: Exhibit 16 and Number 10? Is that right?

A I think so.

JUDGE GOLDBERG: You think there is a terrible distortion-- shocking distortion?

A Not shocking. Not perhaps terrible, but I think a strong distortion.

JUDGE GOLDBERG: You use whatever words you want in making comparisons with respect to distortion.

A Strong.

Questions by Mr. Nelkin:

Q But the distortion with regard to Plaintiffs' Exhibit 11 is, for the purpose of putting in known diverse groups? Is that correct? I mean diverse groups.

A Yes.

Q And as you testified, to dilute the voting strength of the Blacks who exist in the core.

MR. CURRY: Excuse me, your Honor. I believe that the gentleman testified that he could not testify as to the intent of the design. He did testify it was to the effect.

Q All right. Then as to the effect, the tortured lines in Plaintiffs' 11 have the effect of diluting Black voting strength by destroying the core of the city?

A Yes.

Q All right. And with regard to these particular lines, first of all, is there a guarantee of a Black being elected?

A No.

Q All right. In fact, is there a majority Black percentage in District 15 as is shown on Plaintiffs' Exhibit 10?

A No. It is perhaps now forty-five per cent Black.

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Q All right. Now, so if there is any torturing, however you are using the term, it would be to insure those things which the State of Texas has indicated were desirable in drawing a plan; namely, community of interest, compactness contiguousness, as factors?

A Yes.

Q In fact, Dr. Murray, doesn't your plan solve or answer all of the principles that the State of Texas has indicated they desire-- well, not all of them-- the ones that I have represented to you, would be desirable in drawing a map.

MR. CURRY: Your Honor, we object to that as calling for a conclusion. I believe he has testified as to what he thinks it does in each area.

JUDGE GOLDBERG: I think he has, too. We will receive it, but the things heretofore indicated will be constantly on our minds.

Q Does it satisfy those principles?

A I think it does.

Q And does the plan, in your expert opinion that was proposed by or in fact is now law, destroyed-- destroy those principles?

A I do not think it fulfills the state objectives

Q Now, one of the questions that was constantly asked by the State's Attorney in depositions was, isn't it

just a matter of choice between putting a Black minority in--

JUDGE GOLDBERG: --I didn't hear the first part of the question, Mr. Nelkin.

Q Yes, sir. The question that the State's Attorney had asked of several persons as I recall in depositions, was, isn't it simply a matter of choice between having a district which has a chance of electing a Black, such as District 15, under the proposal as opposed to placing substantial numbers, although a minority-- the size of the majority as opposed to the minority, in each of the several districts so that they might be able to temper the views of candidates who were going to be supported by the majority? I want to ask you specifically with regard to Harris County, is that really a-- is that more a theoretical question than a reality?

A I think it is more a theoretical question. The political realities of Harris County are in legislative politics the county is very sharply divided along liberal-conservative lines. If the conservative is elected his political behavior is very predictable. I think irrespective of the composition of population within his district, whether 2 or 20 percent black. If a liberal is elected, I think his political behavior in the Legislature is predictable, irrespective of whether he has 5, 18 or 40 percent black.

I don't believe in the temper notion, tempering idea.

Q Now, with regard to your experience on the Harris County election scene, have you had occasion to become acquainted with the name Everett Collier?

A Yes.

Q Could you tell the Court who Mr. Collier is?

A He is Editor of the Houston Chronicle.

Q And based upon your experience, do you know whether or not he has ever engaged in either assisting or, in fact, drawing some type of governmental election units?

A Yes, he's made no secret of the fact that he's been interested in legislative and other sorts of districting in Harris County. The existing Commissioners

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Court plan in Harris County is commonly known as the Everett Collier plan.

Q Was there a proposed district drawn by Mr. Collier with regards to Congress?

A Oh, back in '65 he was very active in Congress.

Q Could you describe for the Court the features of that plan?

A Well, one proposal that was presented was the hourglass---.

MR. CURRY: Your Honor, we will object. We don't see any relevancy of what proposal Mr. Collier might have proposed in another day and another time that is in issue in this particular case.

MR. NELKIN: Your Honor, if I might be heard on that, we have taken Mr. Collier's deposition, and we are at this moment in Houston taking another deposition which relates to that deposition. We intend to offer proof on the question of how the Board Districts actually did come about, and we would show the Court sometime in the order of proof a plan which has striking

similarities to the plan that was enacted into law. We will also show the Court that there is a relationship between Mr. Collier and others in the way the particular plan was formulated, and we further wish to show the Court based on past history the types of things that Mr. Collier has felt would be palatable for black people in Harris County.

One of those includes a total destruction of the core with respect to Congress.

MR. CURRY: May it please the Court, first of all, Mr. Collier is, I gather, a citizen of the State of Texas and entitled, as anyone else, to express views.

Our position is that unless he was directly involved in the plan involved here, any testimony relating to congressional plans or other plans is totally irrelevant in this issue, and we object to it.

MR. NELKIN: I think we are going to the question of motives. We framed our complaint in the alternative, one is that there was an intention to dilute black voting strength, and secondly, the plan, even if

it was an innocent motive, such as a racially innocent motive, such as political gerrymandering, nevertheless, still has the effect of diluting black voting strength, and for that reason we think it is appropriately immaterial.

(REPORTER'S NOTE: The Court here confer out of the hearing of the court reporter.)

JUDGE GOLDBERG: Counsel, I started this proceeding in the hope that we could keep it as short as possible. Now, if we are going to go back and talk about what happened in other plans and this and that, we are never going to get through here. Now, I want to give you as much latitude as is required in order to enable you to make what you think is your case---.

MR. MELKIN: There are two questions, Your Honor.

JUDGE GOLDBERG: ---but let's keep this within some bounds of reason. We could go back,

I guess, to 1890, and we would never stop this trial. We are talking about the legislative plan, the senatorial plan for Harris County.

MR. NELKIN: Yes, sir.

JUDGE GOLDBERG: Now, if individuals who are involved in this that you think show intention, let's keep it to that, but to go back into Congress of years gone by may have some slight relevance, but I don't know that it is going to be worth all that to you, and in order to be helpful, let's move it along.

MR. NELKIN: Yes, sir.

I would like to ask just the one question.

JUDGE GOLDBERG: All right, go ahead.

BY MR. NELKIN:

Q Did Mr. Collier propose a congressional plan which was not enacted that you are aware of?

A Yes.

Q And could you describe---.

JUDGE GOLDBERG: Congressional plan for what?

MR. NELKIN: Congressional district out of Harris County.

Q And could you describe for the Court the features of that plan?

A It was simply to divide the black community roughly in thirds by running districts across the county.

MR. CURRY: Your Honor, I believe the Court really instructed the Counsel not to go into the area. We renew our objection and also state that he is testifying to a matter that is totally hearsay.

MR. NELKIN: Your Honor, he's asked to describe the plan as he knows it, and, of course, the question of motive, we don't have three people in the State who say, "We agree with you. We designed this plan to dilute black voting strength," and we do have individuals who were involved in drawing this plan, and some of the things they have done in the past are very material.

JUDGE GOLDBERG: Well, subject to, again, what I said repeatedly, we will take it in subject to all the reservations that we have made, but let's move along.

MR. NELKIN: Yes, sir.

BY MR. NELKIN:

Q Now, was there an hourglass figure to that particular plan?

A Yes.

Q And did it, in fact---.

MR. NELKIN: May I lead the witness in this particular area?

JUDGE GOLDBERG: If Mr. Curry and Mr. Jaworski will permit it.

Q Did it not, in fact, Dr. Murray, take in large areas of white at the north and south and then come with a corridor effect through the black area, so that those particular portions of black people would be deprived of a chance at electing a representative?

A It was very good at diminishing any chance that they would have of electing anyone.

JUDGE WOOD: This plan was never adopted, was it?

THE WITNESS: It was not adopted by the Legislature.

JUDGE GOLDBERG: There were other plans suggested by other good citizens, other

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citizens of Harris County?

THE WITNESS: Doubtlessly, sir.

JUDGE WOOD: And they weren't adopted either, were they?

THE WITNESS: One of them was.

MR. MELKIN: We have no further questions at this time.

JUDGE GOLDBERG: Ten minute recess.

(REPORTER'S NOTE: The Court then, at 10:58 o'clock A.M., January 3, 1972, recessed until 11:08 o'clock, A.M., the same date, at which time it reconvened.)

(No omission here.)

(Whereupon, the following proceedings occurred after the recess)

JUDGE GOLDBERG: I want to repeat once more, maybe it is the same colloquy, but just to be sure everybody understands it, this Court is not going to consider anything that it deems irrelevant. We do think you will help the Court a lot if you will simply try to keep as much of the matters relevant as possible instead of having a lot of argument. Let's just move along. We would hope that you would have every confidence in the Court to the extent that we are not going to consider anything that we do not think is irrelevant, incompetent or material I will say that again and again and again. As I said at the beginning, time is of extreme importance to everyone in this case. Somebody is going to want somebody else to say we are right or wrong, and I plead with you, once again, to keep that constantly in your mind. Now, proceed.

MR. NELKIN: Your Honor, we have just received a deposition that has an exhibit attached to it and I would like, if I could, to just for a very short minute to deal with it.

JUDGE JUSTICE: Whose deposition are you referring to?

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MR. NELKIN: Mr. Bob Spellings, who I will represent to the Court testified that he drew the maps of the Senate. We don't have an exhibit number on this because we didn't list--

JUDGE JUSTICE: What is your last exhibit number?

MR. NELKIN: I beg your pardon, this is Mr. Armstrong's deposition. I beg your pardon.

THE CLERK: It should be Exhibit Number 22.

JUDGE JUSTICE: The exhibit you are making reference to will be your 22, then.

MR. BERG: 21.

JUDGE JUSTICE: 21?

MR. NELKIN CONTINUES:

Q Dr. Murray, I will show you what has been marked for identification as Plaintiffs' Exhibit 21, which is an attachment to a deposition of Mr. Bob Armstrong, a defendant in this case, and I would ask you to comment upon the similarity of destruction of the core area in that plan and the plan as presently enacted.

JUDGE JUSTICE: As shown on what exhibit?

MR. NELKIN: As shown on Exhibit--

A 21.

MR. NELKIN: --on Exhibit 11.

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A There is a very great similarity between Exhibits 21 and 11, particularly as they divide the central city and the racial concentration-- ethnic, racial minority concentrations. It looks like two of the districts are almost exactly similar. What is labeled here as the core in the south or the 15th and the 7th on the board enacted plan and the southeast district is very similar to District 11 as shown there. There are differences, some differences in 13 and 6. So, three districts are basically the same, two are somewhat similar but with fairly important differences.

Q All right.

JUDGE GOLDBERG: This deposition, again, what is it going to be known as-- the Armstrong plan?

MR. NELKIN: The Chamber of Commerce plan. At least this was in the personal knowledge of this witness, as to the--

JUDGE GOLDBERG: Is it in the deposition?

MR. NELKIN: Yes, sir.

BY MR. NELKIN:

Q Dr. Murray, with regard to the effect on racial voting strength, is there a similarity between the plan, Plaintiffs' Exhibit 21 and Plaintiffs' Exhibit 11?

A Yes, I think it is just about the same effect.

Q And, what is that effect?

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A It makes it extremely difficult for a Black candidate to win an election to the State Senate.

MR. NELKIN: Your Honor, we would tender that plan in evidence at this time.

JUDGE GOLDBERG: Subject to the alterations the Court has. Proceed.

MR. NELKIN: We have no further questions.

MR. IDAR: I would like to make an inquiry. It is my understanding that the evidence in all of the four cases that are being tried here will be considered in each case.

JUDGE JUSTICE: You have so stipulated at the pretrial conference.

MR. IDAR: I am associated as an intervenor in the Tyler case and there would be one or two questions I would like to ask this witness as pertains to the Mexican-Americans in Houston. I just wonder if I should do that at this time or--

JUDGE WOOD: Well, do it now because he won't be here later.

JUDGE GOLDBERG: Mr. Curry, is it all right to do that now?

MR. CURRY: Yes, sir.

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Questions by Mr. Idar:

Q Dr. Murray, I have one or two questions here as relates to the Mexican-Americans in Harris County and Houston. To begin with I notice that you have used the term "Blacks, Mexican-Americans and Whites". Are you distinguishing between those three groups on the basis of ethnicity or racial factors?

A Ethnicity, voting behavior.

Q You consider them three distinct ethnic groups or ethnic groups?

A Yes. I think they behave differently politically, and there are obvious socioeconomic differences with each group.

Q Could you very briefly give us the reason for distinguishing the Mexican-American as between the-- contrasting that group to the White and the Black?

A Well, I think if you look at housing patterns, educational levels, there are systematic distinctions that can be drawn between the conditions in which people live, education they have received-- If you look at their political behavior, their votes in various elections there are very distinct patterns associated with all three groups.

Q Okay. Now, as related to Mexican-Americans,

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I believe you testified that they constituted the smallest minority group in Houston although it was the fastest growing one. You further testified that it was the most dispersed and that no census tract consisted entirely of Mexican-Americans. Could you give us some rough idea as to what the per cent of Mexican-American population in Houston would be?

A In Harris County it is approaching ten per cent.

Q And in the city itself?

A In the city of Houston it is about twelve or thirteen per cent, I believe.

Q What would you consider to be the largest concentration of Mexican-Americans, either in the city or in Harris County?

A The largest concentration is in the canal navigation area of Houston, which is very near the center of the city and runs sort of southeast from downtown Houston.

Q Do you have any idea, in round numbers, as to how many thousand people might be involved in that particular concentration?

A Yes. The census tracts there that are heavily Mexican-American include about sixty to seventy thousand people. There are many Anglos and some Blacks in those tracts, but they are predominantly Mexican-American.

MR. IDAR: Thank you.

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JUDGE GOLDBERG: Is that the part of the core to which you have been referring?

A Yes. They live near the center of the city-- in the old city of Houston.

MR. IDAR: I must ask one more question, Doctor.

BY MR. IDAR:

Q You were testifying as to the voting patterns as between the Blacks and the White in your city and school elections and you indicated that when it comes to city and school elections as a rule your quite affluent areas-- that is, with a Black candidate on your ticket had the best vote. Then, you made a statement that the reverse was true when it related to legislative races, and you went on further to indicate that this was not particularly unique to Houston alone. Did you have any basic information that might tie in that observation of views to any other parts of Texas?

A No.

MR. IDAR: All right. Thank you.

JUDGE JUSTICE: You may cross examine, Mr. Curry.

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Questions by Mr. Curry:

Q Dr. Murray, I believe earlier you indicated to the Court in your testimony that there was what you referred to as a central city or central core which, I believe, you identified as being certain census tracts that were identified by the 1940 census; is that what you were referring to?

A I think that is the best operational definition of the core city.

Q And, I believe you indicated that the Black population was tending to concentrate within the core city.

A It is growing rapidly in that direction.

Q Are you aware that according to the Harris County-- Excuse me. Let me find the exhibits, Your Honor. Your Honor, it is Plaintiffs' Exhibit 19 which we had a reservation about. Our objection was simply we put it in altogether, the Plaintiffs and Defendants did. It is a big volume and so we have just reserved objections as to those portions within the volume of the exhibit that do not-- that are not limited specifically to Harris County. It includes a metropolitan area beyond the county lines and we have no objection to anything that relates to Harris County only, but we have reserved the objections to the other.

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BY MR. CURRY:

Q So, I will direct your attention to the Houston Chamber of Commerce census data research, and are you aware that according to the distribution of the Harris County total Negro population by major geographical areas, the comparison between 1960 and 1970, that the central area of the Negro population was approximately fifty-one per cent-- Excuse me. Approximately fifty-one per cent of the Black population lived within the central area that you have defined in 1960, but as of 1970, according to this report, it has been reduced by-- to thirty-eight point nine per cent within that same central area. Are you aware of that?

A Yes. But, the proportion has gone up.

Q All right. Are you aware that the 1960 population of Blacks within that central core district that you have defined was 127,467 Blacks, and according to the 1970 report there was only 136,461, which I gather to be less than a 9,000 increase?

A Yes. What were the White figures for the comparative years?

Q Well, I have those in the report but I don't have them immediately before me. Well, excuse me. No, I don't have any. But, according to that exhibit the actual increase is approximately 9,000. And, there has been, in

fact, a decrease of the Black population within that central core district, is that correct?

A Well, if it increased by 9,000 it didn't decrease, is that right? The total population decreased but the Black population increased slightly. You are saying their proportion of the county's population-- there are 350,000 Blacks in Harris County and there were 232,000 Blacks in 1960 in Harris County. In 1960 half of them lived in the central district, that is right. In 1970 only thirty-eight per cent lived in the central city, but that is a blacker area now than it was in 1960.

Q May I show this to the witness, Your Honor?

JUDGE GOLDBERG: Sure.

BY MR. CURRY:

Q For the Court and for the record, I would identify this as part of the exhibit that we have been referring to, but this particular one appears as Table 17, which is page 21 of section 101.

JUDGE JUSTICE: The number of the exhibit is?

MR. CURRY: It is 19, Your Honor. It is Plaintiffs' Exhibit 19.

BY MR. CURRY:

Q According to this record, in 1960 the Black

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population in the central area of the total Harris County population was 51.7 per cent, is that correct?

A That is right.

Q In 1970 it shows that the Black population, within the central area, of being only 38.9 per cent of the total population, is that correct?

A That is right.

Q And, it shows a decrease of 7.1 per cent in connection with the total population, is that correct?

A As a proportion of the total Black population. The number of Blacks actually goes up. The proportion of the total Black population goes down but the Black population proportion of the central district goes up too. In other words, while the Blacks--

Q The White goes up to?

A No, because the Whites moved out. The central district as a whole lost population. I know it is one of those tricky statistical things, but. The central business district, like many other areas, is becoming ever more Black and brown.

Q Is it not true the Blacks are also moving to the suburbs?

A They are certainly dispersing, but much of the Black population is very near the core and would probably be included in any congressional or senatorial district that

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was based on the core.

Q Now, in connection with your testimony relative to Senator Jordan, Senator Jordan was elected in 1966 and her opponent or opponents were White, were they not?

A Yes.

Q She was elected, correct?

A She was elected.

Q She did not have a majority of Blacks within her district, did she?

A She did not.

Q And, even according to your new proposal it would not call for a majority of Blacks?

A That is correct.

Q In fact, the Black candidate would be required to have support from the Whites in order to be elected?

A Not necessarily. Selective turnout patterns, particularly in the Democratic primary, which is the crucial election, will mean that a Black could win w/ h nothing but Black votes.

Q In that regard, I believe you testified that--I believe your word was that there were certain areas of White that had politically disproportionate districts because they tended to vote and register in greater numbers and vote in greater numbers. As a factual matter, the Blacks could vote in greater numbers and could register in

greater numbers, couldn't they?

A They certainly could.

Q Now, you are familiar with Justin Robinson, Jr. who was recently elected to the City Council?

A Yes.

Q As well as I understand it, he is being sworn in this morning. His candidate was an incumbent candidate and an additional White candidate, is that correct?

A That is correct.

Q He actually defeated both of those candidates by an excess of-- he got over fifty per cent of the total vote, did he not?

A Slightly more than fifty per cent.

Q That election was at large, was it not?

A Within the city of Houston at large.

Q Of course, Mr. Robinson is Black?

A Yes.

Q Is he not also a member of the State Executive Democratic Committee?

A Yes.

Q Are you familiar with the Senate plan that was adopted by the Senate prior to the current acts which are in dispute in this case?

A The recommended plan that the Harris County senators proposed?

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Q No, sir. The plan that was adopted by the Senate of the State of Texas-- Senate Resolution 35.

A In 1971?

Q Yes, sir.

A No, I am not.

JUDGE GOLDBERG: Is that plan held--

A There was no Senate plan enacted, was there? They didn't act and thus the Board acted in their stead. The House enacted a plan but the Senate never got around to it.

Q All right. Then, it is Senate Resolution 35 proposed by Senator Jordan.

A That is the Harris County Senators' proposal which was rejected by the Board.

Q Are you familiar with that plan?

A I have a moderate familiarity with it. I have scanned it in the newspapers. I have not looked at a detailed map of it.

Q Are you familiar with Senator Graves -- excuse me. Representative Graves' plan, the Plaintiff in this case?

A I looked at it just a moment ago on the table. I had not seen it before then.

MR. CURRY: Your Honor, for the Court's information, this is Defendant's Exhibit H-6. We undertook, for the convenience of the parties, to identify all Defendants' Exhibits in the Harris County case with the prefix of "H" for ready reference. May I show this to the witness?

(The instrument was handed to the witness).

BY MR. CURRY:

Q Mr. Murray, I direct your attention to the proposed Graves Plan which is the exhibit you have before you and direct your attention to District, I believe 4. Is that correct?

MR. HELKIN: Excuse me, Your Honor. That particular map is not one of those which was agreed upon as in evidence. We reserved an objection on the basis of relevancy with regard to that particular map, inasmuch as we thought the issues in this case

were, one, the motives and the effect of the Board's district, as well as our proposed plan. We have seen a list of proposed exhibits on the part of the Defendant, which would be several plans, which were proposed by various parties, Senate resolutions and that type of thing, and we object to that on the basis of relevancy.

JUDGE GOLDBERG: We will receive it in evidence subject to all of the matters previously discussed with respect to your offer.

Questions by Mr. Curry:

Q Do you know Mr. Graves?

A Yes.

Q Is he seated here at the Plaintiff's table?

A Yes.

Q I direct your attention again to what has been designated as District 4 on the Plan and would you express an opinion as to whether or not that contains gerrymandering for the purpose of insuring the election of a Black?

A Well, it is a proposed district that pulls together a very substantial majority of the Blacks in Harris County. You have to draw a very odd-shaped district to do

it. So if garrymander is odd-shaped, then it is a gerrymander.

Q Had you examined that or are you familiar with what would be the total population of Blacks within that district?

A I think Representative Graves just said it would be 80 percent. That looks like it is right from face validity of scanning.

Q You do not quarrel with that estimate?

A No. It looks good to me.

Q Will you tell the Court in connection with your opinion as to what the various factors that you consider are important for purposes of determining a district and in this case, a Senatorial District? Would you tell the Court what, in your opinion, is the primary rule -- the absolute primary rule?

A I have no absolutely primary rule. In this instance, the proposed plan that I drew up was more or less following guidelines, particularly those indicated by Mr. Spellings in his attempt. But I, personally, have no philosophy of districting.

Q Then, in your opinion, the primary rule of one man-one vote, as has been expressed by the Supreme Court of the United States, is not, in your opinion, the primary

rule?

A That is a reality that drawers of maps deal with now. And as a realist, I would respect their opinion.

Q Have you undertaken -- excuse me. Strike that. I believe you expressed earlier that in your opinion it was your opinion that Barbara Jordan's former Senatorial District had approximately 37 or 38 percent Black vote?

A That is approximately correct.

Q From which she was elected. That was 1966?

A Right.

Q All right. Are you aware of the approximate vote according to the 1970 census in the current act for that Senatorial district?

A In the same numbered district?

Q Yes.

A 37.1 percent, I believe.

Q It is approximately the same percentage of Black vote?

A It is very close.

Q In connection with your study of the State and City election patterns and political science, have you become informed on the distinction between Home Rule cities and non-Home Rule cities?

A I have a very vague understanding. I

certainly not expert in that area.

Q All right. I will ask you whether or not you are familiar that cities within the State of Texas having a population in excess of 5,000 may elect to be a Home Rule city?

A Yes. I am familiar with that provision.

Q Are you aware that under the constitution and the statutes of the State of Texas, such a city may undertake to enact -- it is first of all given certain enumerated powers which substantially cover the areas of local interests, including police protection, sanitation, water, hospitals and things of that nature in health, education and welfare? Are you aware of that?

A Yes.

Q And I believe you have testified that it is in the areas of these Home Rule cities, or at least in Houston --

MR. CURRY: -- which I may explain to the Court, one of our exhibits that is not objected to, identifies the Home Rule cities within Harris County and Houston is one of those.

Q And I believe it is your testimony that in Houston, in the City elections, the pattern of voting has nothing to do, or at least it is bound enough that Blacks

and Mexican-Americans are, in fact, successful in those elections. That it is a different pattern?

A I think they have a more difficult road than a white candidate. It is possible for them to win, if the circumstances are right, but raises an added burden, I think.

Q Yes, sir. I understand at this time, but what I am directing your attention to is, I believe you testified that in your opinion voting in Harris County had two patterns; one was in local elections which was distinct and separate from State elections?

A In the white community with Black candidates, especially on the ballot.

Q And I believe your conclusion was that they had infinitely -- or at least, greater success in local elections than they did in State elections? Is that correct?

A Yes. In part. Because -- well, like the City of Houston is considerably blacker than Harris County as a whole. The Houston Independent School District is a very favorable district now for Black elections, which is not terminate with the City. A large part of the City is excluded from the district.

Q If I told you in addition to Houston, there are many other cities in Harris County that are also Home

Rule cities, I think the same pattern would apply, would it not? I am not asking that on the voting pattern; I am saying as far as a local control of local interest.

A Surely.

Q So that the State participation in items of legislation generally relate to matters of general concern for the County, rather than specific concerns for specific small segregated cores?

A I would disagree.

Q Would you tell the Court why you disagree?

A Well, take the example of housing. The Government of the State of Texas has in recent public announcements called attention to this problem, a need for action. I think it is a problem that if it is going to be built with success, has to be dealt with at a State level. The State is the primary collector and spender of money here and housing is a critical problem in a central city. That is where the greatest amount of dilapidated and deteriorated housing is, and I think the State Legislature has a considerable input to a problem like that. Problems of mass transit are probably going to require a State input or Federal input. I don't think the local municipalities have demonstrated in the past, and I don't think they can in the future, an ability to solve it. They are staggering

problems that the residents in the larger cities of Central and South Texas are faced with right now.

Q Do you think that in a proposed plan, particularly one that is submitted by Mr. Graves, whereby one Black is presumably assured a vote, that necessarily increases the effective representation of many in the State Legislature when it requires the at large vote of all of the Senators?

A Could you run the question by once more?

Q The point I'm making is, that in matters of State Legislation, it is a matter of concern for the entire County and it is a matter of concern for the Senators of the entire State and not peculiarly within simply one district's toll group and in order to make any headway or progress, it requires the support of not only the County's Senator, but State Senators?

A I think any one Senator can be powerful. 12 Senators in Texas can be extremely powerful. I don't know that it requires all of the Senators from Harris County to be affected. They rarely agree now, and I doubt that they will in the future agree. I think we would express their Senators's interest to be --

(Nothing omitted here).

Q Senator Jordan has announced to run for Congress, has she not?

A Yes.

Q And, as a matter of fact, Representative Greves has announced to run for Congress, has he not?

A That's correct.

Q They are running in congressional districts that are not districts in which blacks have a majority?

A Very nearly. There is a core congressional district which includes virtually all the central city. There is not a black majority absolutely, but probable voting strength would give the blacks very nearly a majority---.

Q Excuse me. May I confer with Counsel?

(REPORTER'S NOTE: Counsel confer out of the hearing of the court reporter.)

MR. CURRY: My co-counsel, Your Honor, has suggested that I call to the Court's attention---.

Where is the Pretrial Order on this case?

(REPORTER'S NOTE: Counsel obtains document.)

MR. CURRY: It has been stipulated that no evidence will be introduced to support any claim that anyone has been denied the right to register to vote by physical intimidation or harassment since the 1961 apportionment. No evidence will be introduced to support any claim that any person was denied the right to choose his or her political party.

BY MR. CURRY:

Q I would ask you in your opinion which is the dominant political party in Harris County in state elections?

A It depends on the district. Republicans win in any district that is on the west side. Democrats win in the rest of the counties.

Q The question was for the county.

A If you had a county-wide race, Democrats.

Q And how do blacks normally vote?

A They vote almost exclusively in the Democratic

MR. CURRY: Thank you.

JUDGE JUSTICE: Is there redirect examination?

REDIRECT EXAMINATION

BY MR. HELKIN:

Q Dr. Murray, with respect to the similarity of percentages---.

JUDGE GOLDBERG: I didn't hear the first part of the question.

Q With respect to the similarity of percentages in Senator Jordan's old district and in the new senatorial district, which contains 38.1 percent, is there, nevertheless, a dilution of the black voting strength by virtue of the other people in the district?

A I think there is. Senator Jordan ran county-wide in 1964 and was defeated. In her present district she ran five percentage points higher in the new district, which has the same percentage of blacks, and the primary reason for that is that you have different whites in the new district that has 37 percent black, as opposed to the old district that she was elected from, which was basically a

northside or ship channel district.

Q Again, on the issue of the Judson Robinson election, you indicated that the City of Houston is blacker than Harris County.

I would ask with respect to the question of the whites who are left in the city, as opposed to the whites in the county, not in the city, such as Spring Branch, if there is, in fact, a conservative element that is left out of city politics.

A Oh, very definitely.

Q So it is not only a question of numbers; it is also a question of politics?

A Yes.

Q Now, on the issue of blacks voting in the Democratic primary, is there a distinction made in Harris County between liberals and conservative Democrats?

A A rather clear distinction can be made in most races.

Q So that the fair question is, do blacks vote for liberal or conservative Democrats. What would be the answer to that?

A Liberal Democrats.

Q So, the fact that Democrats are elected and blacks voted in the Democratic primary, does not necessarily

mean that the Democrats who were elected represent blacks adequately?

A No.

MR. HELKIN: That's all.

JUDGE GOLDBERG: Anything further?

MR. CURRY: We have no questions, Your Honor.

(WITNESS STANDS ASIDE.)

MR. BERG: May it please the Court, my name is David Berg, and I am going to proceed with Mr. Bob Armstrong.

BOB ARMSTRONG,

a witness called by the Plaintiffs, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. BERG:

Q May it please the Court.

Would you state your name for the record, please?

A My name is Bob Armstrong.

Q Are you at this time a defendant in this cause of action?

A I am Defendant in some of the causes that are now consolidated before this Court.

Q I am referring specifically at this time to the Harris County cause of action brought against the Redistricting Board.

A I think that is correct, yes.

Q At this point, Mr. Armstrong, would you state for the Court what your position was in respect to redistricting, what position you occupied on the Board?

A I am Commissioner of the General Land Office.

Q And as such, you are a member of the Senate Redistricting Board?

A That's correct.

Q Mr. Armstrong, you have been deposed previously this week, have you not?

A Yes, I believe at the end of last week.

MR. BERG: Your Honor, at this time I have in my hand a deposition of Mr. Armstrong. I see that he has not signed it,

but we would like to mark it at this time and offer it. It will be -- I don't know the number. I think it is 22.

MR. CURRY: Your Honor, I perhaps should defer this to my co-counsel, since I wasn't present at the deposition. I think he will have to handle this witness. I will defer to Mr. McDaniel.

MR. McDANIEL: Your Honor, we had assumed the deposition would be treated like any other depositions. They would designate what portions they wanted to offer, and we would designate what portions we wanted to offer, and either side could make such objections at the time that they thought proper. That was our agreement at the time we took the deposition.

MR. BERG: At this point, Your Honor, our primary concern is only on the questions asked by me, which start at Page 33. We can limit it to my questioning for these purposes, the questions on Pages 33 through 50.

JUDGE GOLDBERG: You want to put that in instead of asking him questions?

MR. BERG: Yes, Your Honor, except that I need to go into another matter also with Mr. Armstrong not covered by the deposition.

JUDGE GOLDBERG: Do you object to his using Pages -- what was it -- 33?

MR. BERG: To 50.

JUDGE GOLDBERG: Of the deposition.

MR. McDANIEL: So long as I have time to read the deposition---.

JUDGE GOLDBERG: You may have the time, and you may make such objections, and we will consider it.

MR. McDANIEL: Thank you, Your Honor.

JUDGE JUSTICE: You want to summarize what is in the deposition?

MR. BERG: Yes, I do.

Mr. Armstrong testified that he was concerned that the core of the city, the black vote was diluted by the plan drawn by the Board, and that is exactly what I want to go over with him at this time but to get into another matter not previously covered, I feel, as well.

(REPORTER'S NOTE: The Court here

confer out of the hearing of the court reporter.)

JUDGE GOLDBERG: If it is in here, do you want to go over this same thing again?

MR. BERG: I am not going to take but one question.

JUDGE GOLDBERG: Well, go ahead.

MR. BERG: Your Honor, to summarize, further he did not sign the Senatorial Redistricting Board's plan.

JUDGE GOLDBERG: He didn't?

MR. BERG: No, and that is also in the deposition.

BY MR. BERG:

Q Mr. Commissioner, is that a fair statement of what you said in your deposition, that you were concerned over the Board's plan in that it diluted the black voting strength in Harris County?

A That is correct.

Q Mr. Commissioner, is it correct that you did not sign the Senate Redistricting Board plan because of that reason?

A Because of that reason and some reservations I had about some of the other districts, but that was the basic reason.

MR. BERG: Some of those reservations, if I might summarize, Mr. Armstrong testified that he was concerned about contiguity, compactness of the districts drawn and so on, all the various standards he felt were not met by the Senatorial Redistricting Board.

A That is correct, and I might add in Bexar County, as well as Harris.

Q Mr. Commissioner, may I ask you at this time whether or not either prior to or very close in relation to time that the Board drew its map you had an opportunity to discuss the map with Representative Sissy Farenthold?

A I had a number of discussions with Representative Farenthold throughout the course of redistricting, some about House plan and some about the Senate plan. I would think that I in all probability did talk to her, although it is not clear to me right now in my mind which meeting you are talking about or which discussion.

Q All right. Let me bring it to hand what I am speaking of. Did she at any time indicate to you during

the time it was being drawn or close by the time that it was drawn that she was concerned and had been told by Gus Mutscher that Ben Barnes was committed to the Chronicle in drawing this map?

MR. CURRY: Your Honor---.

MR. McDANIEL: Your Honor---.

MR. CURRY: Excuse me, I'm not supposed to make objections. I'm sorry.

(LAUGHTER)

JUDGE GOLDBERG: That's all right, Mr. Curry.

MR. McDANIEL: Keeping in mind what the Court admonished all of us earlier, I can't help but get up and point out that this is about third-hand hearsay and, well, I will just sit down and trust the Court to take the evidence for what it is worth.

MR. BERG: Your Honor, may I speak to that point briefly?

JUDGE GOLDBERG: You may speak to the point but---.

MR. BERG: These are all named Defendants in the lawsuit. It is considered an admission against interest, and we want to go into

motivation in drawing this map, which we consider to be a product of business interests in Harris County.

MR. McDANIEL: I certainly would assert that nothing he has said so far indicates any admission against interest.

JUDGE GOLDBERG: Gentlemen, I repeat again, the Court will let this evidence in with all of the reservations, the problems, everything else that goes with it.

Now, proceed.

BY MR. BERG:

Q Would you answer that question, Mr. Armstrong

A Would you mind asking it again?

Q All right, sir.

(LAUGHTER)

Q Was Representative Farenthold concerned in her conversation with you about the conversation she had -- I will break it down -- about a conversation she had had with Gus Mutscher concerning the redistricting of the senatorial districts in Harris County?

A It would be difficult for me to pinpoint that particular conversation, but I will say that I do

recall that that question was raised to me by Representative Farenthold and perhaps others in the course of our drafting of this plan.

Q And what was your response to that particular question?

A Well, I do not recall that I made a response or, at least, I don't recall what my response was, but I would say this. My basic objection to the plan did not have anything to do with the origin of plan or the various forces or cross currents that were involved.

My concern about the plan was its ultimate effect.

Q I understand your concern about the plan, but did you ever indicate to Representative Farenthold or anyone else your concern that Everett Collier and the Houston Chronicle had obtained a commitment as to how the plan would be drawn from Ben Barnes?

A I would say that that possibility concerned me, but I did not know, as a matter of fact, about any such commitment or whether, in fact, Mr. Collier had talked to Mr. Barnes.

Q What did you base that possibility on, Mr. Armstrong?

A Well, it was just a general feeling, I think,

based on people observing who went to whose office at the time that people were lobbying for their plan. I don't think that this is necessarily bad. People came to see me with ideas, some self-serving, but many who just wanted to provide guidance, but, in any event, I think that it was somewhat clear that a group of people were active and lobbying the Harris County part of the plan, but, like I say, I don't know what they were saying. They might have had a totally different plan.

Q Well, is it still your opinion based on the actual districts drawn by the Board -- you said you held that opinion that there was a possibility that there was a commitment obtained by the Chronicle. Is there anything---?

JUDGE JUSTICE: Now, wait a minute.

JUDGE GOLDBERG: Wait a minute here. Let's be sure that he said it.

MR. BERG: He said, if I understood---.

JUDGE GOLDBERG: Well, let him---. Pardon me.

THE WITNESS: If I may volunteer this statement by way of clarification.

JUDGE JUSTICE: Go ahead.

THE WITNESS: I have never felt on personal

DIRECT EXAMINATION - Armstrong

knowledge that any commitment had been made or not made. I simply didn't know about this.

BY MR. BERG:

Q Is there anything in the new plan, Commissioner Armstrong, or the plan drawn by the Board, rather -- I think that is Exhibit 11 -- this is the new Board District plan (indicating).

Is there anything to change your opinion that the black votes were diluted by that particular plan?

A As I stated, and I don't mean to be repetitious, because it is in my deposition--.

Q Yes, sir.

A The three census tracts at the easternmost extremity of District 15 worried me because they had been pulled out of Senator Jordan's old district, and I was concerned that if we started changing what I think the Court refers to as historical boundaries, that we had to be very careful that we did so in a manner that did not dilute the voting strength of any class, and I think this did that.

MR. BERG: That's all I have of this witness, Your Honor.

CROSS-EXAMINATION

BY MR. McDANIEL:

Q Mr. Commissioner, I believe you indicated on depositions that you had a difference of opinion concerning how the lines of the senatorial districts in Houston should be drawn between yourself and the Attorney General and the Lt. Governor. Is that correct?

A That is correct.

Q And I believe you further testified that you talked to the Lt. Governor and to the Attorney General about the matter. Is that correct?

A That is correct.

Q Would you tell us, please, what the Lt. Governor answered when you expressed your concerns to him?

A Well, you will recall that I had presented an alternative plan, which would have shifted, as I recall, some 19,000 votes, although don't hold me to that figure. It is whatever the total of these three census tracts happened to be -- in a manner that I felt made a more cohesive district all the way around.

His answer was that he was not concerned

about the black situation simply because the percentages in the new district of Blades were greater than the percentages in Senator Jordan's district.

Q. Very slightly greater, was it not?

A. I think that's right.

Now, I assume I am not under the rule. I heard the witness prior to me testify, I think, that it was maybe a little less, as it has turned out, but---.

Q. I believe it is one-tenth of one percent, as a matter of fact.

A. Right, but the assumption was at that time that the percentage would be larger, and, in short, that we had a firm plan that some other members of the Board could agree upon, and he felt that this was a better procedure to follow to accept the regular plan without amending it, or the then approved plan---.

Q. Did the Attorney General -- excuse me, I don't mean to interrupt your answer. I thought you were through.

Did the Attorney General answer your inquiry in much the same manner?

A. I would say substantially the same way. He pointed out my amendment would have created a less compact district in District 11, and I would admit this, because in

order that the one-man one-vote numbers requirement work it did create a gooseneck, as that term is cobbled, and although I thought the other two districts were more compact, he also felt perhaps there was a difference of opinion between us that several Senators with a fair percentage of blacks in their districts might be more persuasive than, say, two black Senators, and there is room for argument on this.

(No admission here.)

Q It was, so far as you were concerned, an honest difference of opinion, was it not?

A I think so.

Q Did you ever, at any time, during your discussions with the other members of the Board, have any indication or for that matter, any feeling that any member of the Board intended racial discrimination in drawing the Senatorial or House apportionment?

A If you are asking as to my opinion, rather than for a certainty, as we pointed out, I cannot look into their minds.

Q I understand.

A I can say -- I can remember no overt racial discriminatory statements made or anything that would have caused me alarm by a member of the Board.

Q All right. Now, I believe that you stated on deposition also, that the plan presented by Representativ Graves was not objectionable to you? Is that correct?

A It is hard to remember each plan in detail, but my basic recollection was that it cured the problems that I was worried about.

Q The basic question, I think, it is fair to characterize, being whether or not it was more desirable to provide one district with a heavy concentration of Black

voters or several districts with a somewhat lesser concentration of Black voters. I am characterizing that as the difference between the Graves plan and the other plan. Is that accurate?

A It is accurate, except that we tend to talk too much, I think, in terms of Black interests as opposed to what I think we were dealing with at that time, which was greater than that. It was the interest of the core city.

Q All right.

A The community of interests of the impoverished no matter what color. Now, it happens that most Blacks live there, but with that addition that we are talking about, the core, perhaps as opposed to just the Black core.

Q You would agree, I take it, then, that what we are concerned with is not so much a Black problem as opposed to a white problem, but rather a problem of poverty as opposed to problems which are not peculiar to people who are in the straits of poverty, whatever their race may be?

A I don't believe they are mutually exclusive. I think this is what the redistricting cases are about; the community of interest and the race and parties.

Q All right.

A And these are the things that you want to

keep together, as I understand a district, and you don't want to dilute.

Q All right. Now, concerning your conversation relative to the second-hand relation from Speaker Hatcher, my only question regarding that is that Speaker Hatcher, for whatever his reasons may have been, did not sign the Senatorial apportionment either, did he?

A No, he did not.

MR. McDANIEL: I believe that's all I have, Your Honor.

MR. REED: We have nothing further, Your Honor.

JUDGE GOLDBERG: Any questions? You are excused.

JUDGE JUSTICE: Please call your next witness.

CURTIS CRAPER,

called as a Witness on behalf of the Plaintiff, after having been first duly cautioned and sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Reed:

Direct Examination - Graves: 119

Q State your name for the record, please.

A Curtis Graves.

Q Mr. Graves, you are a resident of Harris County, Texas? Is that correct?

A Yes.

Q You have resided there for how long, sir?

A For about 12 years.

Q And can you tell this Court your present position?

A I am a member of the State House of Representatives, District 23, Position 6.

Q When were you first elected, Representative Graves?

A '66.

Q And you ran again in '68?

A '68 and in '70.

Q And won all three times?

A Right.

Q Were those the only three races you have ever made?

A No. I was a candidate for Mayor of the City of Houston in 1969.

Q And the outcome of that, of course, has been established by Professor Murray; you lost that race?

A Right.

Q Representative Greves, you are familiar, are you not, with the Board's district, the new Plan drawn by the Senate Redistricting Committee?

A Right.

Q You heard Professor Murray testify this morning what he considered the net effect of those particular lines to be. That is, the dilution of Black votes among other things. Do you concur in that result?

A Yes, I do.

Q You are familiar, are you not, with the geographical and political structure of Harris County?

A Yes, I am, having run four races there, I am pretty familiar.

Q Can you tell us, Representative Greves, in the New Plan, where you live?

A I live -- Commissioner Armstrong calls it the "gooseneck", and I call it the "fickle finger". I live in 15, in the little finger that is sticking out into the six. Right.

Q And do you live within a block of this border line?

A That's right.

Q Of the outermost point of that border line?

A Right.

JUDGE JUSTICE: For the record, you are referring to the Easternmost portion of the District, are you not?

A Of District 15, yes, sir.

Q Yes, sir. Now, within that same district, Representative Graves, there is -- exists an area called "River Oaks", does there not?

A It is more central and more western in the same District 15.

Q You have heard it characterized, and would you agree that it is one of the most opulent and affluent areas in the City?

A One of the most affluent that I know of in the State of Texas.

Q In addition to yourself, in District 15, do there live other Blacks? Is that correct?

A That's correct.

Q Referring to Plaintiff's Exhibit -- I am referring to Plaintiffs' Exhibit 18, within the -- what is District 15, using this as a basis and your own personal knowledge of Houston Harris County, does there also exist a poverty pocket within 15?

A That's correct.

Q Now, can you tell me what you, as an individual or what the other Black or poor citizens of that area have in common with River Oaks?

A Precisely nothing.

Q Can you tell me, sir, if that map makes geographic sense to you?

A No, it doesn't. I think it was drawn up for three reasons. One of which being the fact that it would elect Mr. Ogg to District 15. The second reason, that it would elect Mr. Lanon to Position 7. And the third reason that it would systematically disfranchise us from ever seeking a Senate seat.

Q And what did their information, in your estimation, -- does this map keep a Black from being elected in Harris County to the Senate?

A To my knowledge, it would. For at least the next 10 years.

Q In your past experience within the House of Representatives, in introducing legislation into that House, in working with the Senate, how would you characterize the support you have received from white Legislators?

A Well, it varys. Depending upon legislation. I have received a lot of support for some measures that are totally concerned with all of Harris County and I

have received no support or relatively no support for other measures that are peculiarly concerned with the ethnic background that I come from.

Q In dealing with other Legislators, I suppose you are not limiting this just to the House?

A No. It is the same way in the Senate.

Q Would you say there is a lack of interest or would you say it goes beyond just a lack of interest in sponsoring Black-oriented Legislation?

A Well, it goes from lack of interest to flat no interest at all. There are two Blacks in the Texas House of Representatives, and the majority of legislation that is peculiarly aimed at alleviating some problems in their areas have come from those two Black elected officials.

Q Would you state whether that lack of interest or no interest at all goes one step beyond into a positive antagonism on the part of some members of both the House and Senate in Texas?

A I can categorically say it is an antagonistic thing. I have seen bills that have no racial overtones be defeated because I was the sponsor, or because a Black person was the sponsor.

Q Do you consider, based upon your experience in the Legislature, that Blacks who reside within the district

of whites, are properly represented within the House and the Senate of Texas?

A Repeat the question.

Q Do you consider, based upon your experience in the Legislature, that Blacks who reside within the District of whites are properly represented within the House and the Senate of Texas?

A No, they are not.

Q Can you state why not? What indicates that to you, other than your -- than the antagonism towards your legislation?

A The preponderance of mail and telephone calls and contacts that I received from not only my legislative district, not only the City of Houston, not only the County of Harris, not only the Southern part of Texas, but all of Texas, Louisiana, Mississippi and Arkansas. I have been forced to be a representative for many more people than I would choose to.

(Nothing omitted here)

Direct Examination - Graves

Q Representative Graves, does this indicate to you -- well, let me go back to a question Mr. MacDanial placed to Mr. Murray and it seemed to indicate that need not only one man in the Senate, but no matter who is elected from Harris County, are going to need the help of other Senators in passing legislation. Do you remember that testimony?

A Yes, I do.

Q Does this indicate to you the need that that man be White to get along with other senators?

A No. I don't think so. I think there should be a difference. I think there should be a difference of opinion and of ethnic backgrounds in the State Senate so that all views can be heard.

Q Well, in that regard, you have been accused of gerrymandering a Black district.

A Yeah, I did one.

Q And in that regard, sir, do you feel that -- and based upon what you have told us and something I am going to ask you about in a moment, concerning race relations in Houston, do you feel that there is an extraordinary need for Black representation in the Senate in Texas?

A I think that there is, based upon the knowledge that I have. I think that if there is not the Black

viewpoint in the State Senate, you are going to have problems in Texas. I think that the Black viewpoint at this point in our history is vital to the existence of Blacks. If people can't take legitimate means to solve -- to have their grievances aired, they take illegitimate means to air their grievances. This is some of the testimony I gave before the Board when I appeared before them.

Q Now, the Black and White split in the legislature, is that rare or does that appear on many occasions? Strike that question. When there is Black legislation or Black-oriented legislation, is there a split that occurs rarely or frequently?

A When there is Black legislation or Black-oriented legislation, there is a split that occurs almost every time.

Q Let's talk about Houston for a moment, Representative Graves. You ran for a city office in Houston, did you not?

A Right.

Q You ran for mayor in '69?

A Right.

Q In that particular race, there first began to develop an issue which recently crystallized concerning the police in Houston, Texas? Is that correct, sir?

A That is correct.

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Q Can you tell us briefly who that issue revolves around and inform the Court why it is important to Blacks in Houston and what the result has been?

A It revolves around--

MR. CURRY: Excuse me. Your Honor, I simply want to observe that this falls within the category that we reserved before and I think the Court will treat it accordingly.

JUDGE GOLDBERG: Go ahead.

A It involves Police Chief Herman Short.

Q And Blacks in Houston--

A --They feel he is not akin to them or treating them as fairly as he is other parts of the community.

Q That there is a dispirit or different treatment of policemen with Blacks than with Whites in the city of Houston?

A Yes, sir.

Q This recently came to light in another election, did it not?

A Yes, it did.

Q Now, can you tell us offhand-- I believe the figures are in evidence or we will place them now, but do you know the percentage of Blacks that voted for the last mayor in the last Houston race for mayor?

A About three per cent or so.

Q Well, if it is four per cent--

A Four per cent or something like that.

Q Is it your opinion that that split in the Black vote, the heavily-- well, let me ask you this: The present mayor, Mayor Welch, is he identified closely with Chief Short in Houston?

A Yes.

Q Would you say the reason for that vote was because of Chief Short's issue, in part?

A I think that would be the primary requisite.

Q Is it your testimony then that race relations in Houston are not good at this time?

A I think possibly they are at-- if not the lowest, at nearly the lowest ebb.

Q That the city is polarized?

A The city is polarized and there is a deep cleavage between the city's White community and the Black community.

Q I am asking this question because this again points up the need, does it not, for Black representation at the state level in the Senate?

A Precisely.

Q How often did you see Everett Collier enter the office of Ben Barnes during the last session of the legislature?

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A Mr. Barnes, I cannot testify to, as frequently as Mr. Mutscher.

Q Was it frequently?

A Mr. Mutscher, I saw Mr. Collier going into his office nearly daily, but Mr. Barnes almost as much, but I am not on the Senate side as much as the House side.

Q You are familiar with the Houston Chronicle of course?

A Yes.

Q Over the last few years have you come to regard it as liberal or conservative? Can you characterize it one way or the other?

A I would characterize it as super conservative.

Q And does the Black community, therefore, not have a basic interest within the Houston Chronicle, at least editorially stated, within the Houston community?

A I believe so.

Q Do you agree with Mr. Murray's testimony that the Blacks in Houston are generally liberal and are Democrats?

A Generally liberal and Democratic.

Q Does the Board's district, as I previously pointed out to you as Exhibit 11, guarantee, in your mind, the re-election of any incumbent senators?

A Does it guarantee the re-election of any

incumbent senators?

Q Yes, sir.

A In my opinion I think two incumbent senators would be able to be re-elected from the plan.

Q Who would they be, sir?

A Possibly, but I really can't say yes, because I don't know the variables, and I don't know who else is going to run; Senator Brooks, who lives in the Pasadena area, which is by that map hooked into the-- in the city, Black area, and Senator Wallace, which is north of that in District 6.

Q Now, what about Senators Lemon and Ogg? Would they have any trouble being re-elected?

A They are not senators now, God forbid. But if their plan goes through, this District 15 would be probably represented by Mr. Off, and Mr. Lemon would be able to be elected probably in District 7.

Q Now, this is Exhibit marked number 10, which contains the proposed districts by Professor Murray. You are familiar-- you have seen this map before. We showed it to you? Is that not correct?

A I saw it this morning, yes, sir.

Q And you are aware that there is only a 43.4 per cent in District 15-- a 43.4 Black population percentages?

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A That's right.

Q Is it your considered opinion that a Black could be elected from that district?

A Without any problem.

MR. BERG: I believe that's all we have.

JUDGE GOLDBERG: Any cross?

MR. CURRY: Yes, Your Honor.

CROSS EXAMINATION

Questions by Mr. Curry:

Q Mr. Graves, would you characterize Senator Jordan's effectiveness in the Senate as ineffective?

A No, I wouldn't.

Q She is Black, is she not?

A Yes, she is.

Q I believe you testified earlier that you deliberately prepared a proposed plan to gerrymander a Black district? Is that correct?

A That is exactly right.

Q Are you suggesting to the Court that a minority race should be insured by gerrymandering a position in the legislature?

A I think there should be a Black district. I drew the best possible Black district, knowing that the plan would be compromised by the Board.

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Q Your purpose and your concept was to enhance or strengthen the vote of the minority group?

A Right.

Q Rather than being color blinded.

A I was not color blinded then. No one has ever accused me of that.

Q You have announced to run for Congress, have you not?

A I have announced that I am going to announce.

Q Are you familiar with the home rule city concept?

A Yes, I am.

Q Police Chief Harman Short is an issue of the home rule city, is he not?

A He is an issue in Houston, Texas.

Q Are you familiar with the constitutional provision which prohibits special legislation designed to take care of a local area?

A Yes, sir, I am.

MR. CURRY: We pass the witness, Your Honor.

JUDGE GOLDBERG: What is the demography of your present-- what is the demography of the representative district where you now reside?

A I reside in a district that is about forty per cent Black, about ten to twelve per cent Mexican-American

and the rest, Anglo.

JUDGE GOLDBERG: If you had decided to run for re-election, would you consider that district a safe one for you?

A Oh, yes. I could get elected from that district had it been kept intact for the rest of my life.

JUDGE GOLDBERG: I am not asking about any actuarial matters. I am speaking of the election that we are talking about. Was the legislative district that was created such that you could have been re-elected?

A That was a multi-member district. There were six of us that ran from that district as a slate, and I could have been elected, but that district no longer exists.

JUDGE GOLDBERG: As a single member district, do you think you could have been elected?

A As a single member district, it would have been more difficult. Much more difficult.

JUDGE GOLDBERG: More difficult?

A Much more difficult.

JUDGE GOLDBERG: Under the plan of the Board?

A No. You are confusing the two. You are

talking about my House district?

JUDGE GOLDBERG: Yes.

A And you are talking about a Senate district.

JUDGE GOLDBERG: I want to know about the House district.

A Now the House District, as they presently exist under the Board plan, I live in District Number 88 which is about ninety per cent Black.

JUDGE GOLDBERG: That is all I want to know.

A But I was not elected from that district.

JUDGE JUSTICE: I have one or two questions. What particular bills did you sponsor with reference to the Black communities you have identified?

A I don't know, Judge, whether we have that much time, because--

JUDGE JUSTICE: --What are some of the more outstanding ones in your judgment?

A In 1966 I sponsored a bill that would cause Black history to be taught in the State of Texas, which is now a reality, though they never did pass my bill. Last session we dealt with welfare matters substantially. Last session we also dealt with--

JUDGE JUSTICE: --What I am asking about is what particular bills did you sponsor that had to

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do, in your opinion, with the welfare of the Black community?

A Well, the Black History Bill, I think, was a very significant one. I introduced that twice and both times it was defeated by ten-- well, the times that the vote came to the floor, it was defeated by ten or twelve votes. The bill that I introduced this session here, dealing with hard-to-place children for adoptions dealt specifically with Black children being adopted and subsidized somewhat. The adoption of these children, who have trouble finding adoptive homes for, who are Black and Brown or physically or mentally handicapped. That bill passed into law this time, by the way, without exception.

JUDGE JUSTICE: Those are the only two?

A Well, I introduced twenty-two bills last session. I wish I had a list of them and I could kind of give you a better breakdown of them, but I can't really remember.

JUDGE JUSTICE: Were they all racially oriented?

A No. I even introduced and passed bills for the Houston Police Department.

JUDGE JUSTICE: You made reference to the fact that Senator Jordan was an effective senator.

What bills specifically related to the welfare of Blacks did she sponsor?

A I am not familiar with Senator Jordan's legislation policies.

JUDGE JUSTICE: All right. I have no further questions.

JUDGE GOLDBERG: Anything further?

MR. BERG: Excuse me one minute, Your Honor.

REDIRECT EXAMINATION

Questions by Mr. Berg:

Q Representative Graves, we have discussed previously, legislation matters concerning something that disturbed you about denture companies in Houston.

A Right.

Q Why don't you elucidate a little bit? I think that will bring to light the problem you were discussing.

A There is a peculiar problem in Texas that has started in Houston where dental laboratories will set up a laboratory advertising in the newspapers and in the Black newspapers, primarily, that they will make dentures for you. The laboratories, in my opinion, that operate in the minority areas in many cases do not give

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the kind of treatment that could be given to these individuals--

Q --Excuse me, sir.

A Yes.

Q In introducing your bill, was your primary concern that those companies were victimizing or at least you explained it to me-- victimizing poor people?

A Black people and Brown people were being victimized by dental laboratories. I introduced, along with Representative Don Caveness of Austin, a piece of legislation that would make it impossible for a dentist-- a dental laboratory to operate without a dentist. The bill was not passed. It was defeated in the Senate and it is still possible for this to exist in Texas or in Harris County and these operations still continue now.

Q Is it your testimony after questioning by Judge Justice that legislation you have introduced relating to race, although you have not given examples at this point, are met with heavy opposition from White legislators?

A They are met with heavy opposition by White legislators.

Q Are there any other examples that you bring to mind at this point, other than the two that you mentioned?

A Well, the issues are not that clearcut. And, many times it might be an amendment to a bill that has definite racial overtones that if the passage -- if my amendment passes, it would definitely affect a certain area. For instance, in 1967 I introduced an amendment to raise the minimum unemployment compensation and they were interested with raising the maximum of the State unemployment and the people on the lower end of the economic scale, mainly the Blacks and browns, or more worried with raising the minimum. My amendment passed by one vote, and that was possibly one of the hottest issues that came up for, I guess, a two-month period in the House.

MR. HEMS: That is all.

JUDGE COLEMAN: In your opinion, would the Commercial redistricting hurt, help or handicap Senator Jordan?

A It would just about make it impossible for Senator Jordan to be elected to her own seat. I think she has testified to that in a deposition; she could not be reelected.

JUDGE COLEMAN: And that is your opinion, too?

A Right. Well, it paired her with another Senator, sitting Senator, is the first thing it did. And, secondly, it diluted the white vote.

JUDGE GOLDBERG: Is there anything further?

MR. BERG: Nothing further, Your Honor.

MR. CURRY: We would like to clear up one thing, Your Honor.

CROSS EXAMINATION

Questions by Mr. Curry:

Q The dental bill you referred to, Mr. Graves, you indicated it was defeated in the Senate?

A No. It was diluted in the Senate.

Q Was it passed in the House?

A It was passed in the House.

MR. CURRY: Thank you.

JUDGE GOLDBERG: Anything further?

MR. BERG: Nothing further.

JUDGE JUSTICE: May I ask how many more witnesses --

MR. BERG: Just one, Your Honor. We can finish in 15 minutes.

JUDGE JUSTICE: There is one other thing I want to bring up. The Court has entered an Order

requiring the parties on each side to deposit the sum of $5,000 as advance Court costs; and, I am informed by the Clerk that this has not been done. When are the Plaintiffs going to deposit that money -- referring to the entire lawsuit and not just the Houston lawsuit, the four causes.

MR. HUBE: Excuse me, Your Honor. Mr. Richards was coordinating that, and we have no idea at what stage it is.

JUDGE JUSTICE: Would you bring it to his attention, that the Court is making very pointed inquiries of that?

MR. HUBE: Yes, sir.

JUDGE JUSTICE: What about the Defendants -- and I say "Defendants" and not just the State of Texas, but also including the State Democratic Executive Committee and members thereof?

MR. MCMAHEN: I speak only for the State, of course, Your Honor, I have explained the problem to you before, and we have not solved it yet. That is all I can say about it.

JUDGE JUSTICE: Is Mr. Lane present? Perhaps you can tell us about the Democratic Executive Committee.

MR. LUNA: We have not yet located the available funds, Your Honor, but we are working on it.

JUDGE JUSTICE: How soon do you think you will be able to give us an answer to this?

MR. LUNA: Hopefully tomorrow, but frankly, a great deal of our hopes and future is tied to the State's ability to come up with some money.

JUDGE JUSTICE: Of course, I realize that you have problems among yourselves, but we are primarily concerned with getting the money into the till of the Court.

MR. LUNA: I understand.

JUDGE JUSTICE: Can you report to us tomorrow?

MR. LUNA: I can report to you. I don't know if the Court is aware that the Democratic party is in --

JUDGE JUSTICE: It might be that we will have to get out an execution on some of you.

MR. BERG: May I proceed?

JUDGE GOLDBERG: If you have one more witness, let's go ahead an finish.

a witness called by the Plaintiffs, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Berry:

Q Would you state your name, for the record, please?

A Francis Farenthold.

Q You are an elected representative, are you not?

A Yes, sir.

Q Of the State of Texas?

A Yes.

Q What district?

A Nueces. I am one of four members representing Nueces, Kleberg Counties.

Q How long have you held that position?

A I was elected in November of 1968.

Q As a representative and concerned Legislator, you were interested in the district being drawn in Harris County — for Harris County, were you not, by the Senatorial Redistricting Board?

A I was concerned with the entire redistricting case.

Q Would you state to the Court, did you initiate some correspondence concerning the -- when the maps would be drawn and when the Board hearing would be held to the various members of the Board?

A Yes, I did. I was concerned, because there was a 90 day limitation under the Constitution as to when the Legislative Redistricting Board could be organized. So, I wrote on August 2nd each member of the Restricting Board asking them when they planned to meet under this Constitutional restriction, would the meetings be open and were there funds -- had there been funds appropriated? I don't recall, but approximately on the 5th, I had correspondence from most of them saying that there had not been any meeting to that time and most of them expressed a concern that the meetings be open and this was left at that. And, I think then the Redistricting Board was called for a public hearing, I believe, on August 24th.

Q And you attended, I believe, some of those meetings, did you not?

A Yes. I attended the first one. And, was in communication, rather than correspondence, I would say, with several members of that Redistricting Board from

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that time forward.

Q Was Gus Mutscher one of those members?

A Yes, he was.

Q Representative Farenthold, did you, at some time prior to the drawing of Plaintiffs' Exhibit 11, the Board Districts, did you at some time have occasion to go to Gus Mutscher and discuss when those plans would be drawn or not?

A As best I can tell, because I haven't been able to find any memos that I wrote. But, I saw the speaker approximately two or three times during the summer and up to September 27, so we spoke on this subject either September 27th or prior to that -- but no later than September 27th.

Q Did one of those conversations touch on the motivation for the delay in drawing the Harris County Districts -- let me restate that. Did you discuss with Mr. Mutscher any commitments that had been made concerning the drawing of Senatorial District in Harris County or not?

A Let me put it this way, he volunteered information that I am now going to relate, because I had specifically gone in on another subject. But, this matter of redistricting came up and he volunteered the following information, and that was that the Lieutenant

Governor had conflicting commitments to Senator Jordan and to the Houston Chronicle, and the Speaker did not know how they would be resolved. I have a very clear impression of it, because I remember being struck with the fact that the Houston Chronicle was considered an entity.

Q That had to be listened to in drawing maps?

A It was very clear in my mind for that reason, that that expression was used.

Q Did you ever express your concern, after receiving this information, over the commitments -- or the conflicting commitment between Senator Jordan and the Houston Chronicle to another member of the Commission, Robert Armstrong?

A I cannot pinpoint the date, because as the Commissioner said, we had numerous conversations and we were on a TV program one time together after September 27th, but I do remember asking him if there was any substance to the statement that I had been given, and he said, "Yes," and he went on into detail, and I simply do not remember that. I took notes on it and I cannot find my notes. So, the substance of what he said, after he said there was validity to what I had repeated, I cannot tell you now.

Q Do you recall, or was it your impression,

that he was agreeing that there was substance to these --

A That is right. I thought it was an unusual statement that I had heard from the Speaker and I wanted to find out more about it.

Q Do you remember if he stated how he knew that -- how Armstrong knew that?

A No.

Q Did he mention Everett Collier to you in that discussion?

A He did, because at the time I really wasn't aware of Mr. Collier.

Q And, did he discuss Collier's involvement or do you recall that?

A No.

Q He didn't discuss it with you, or you don't remember?

A No, I don't remember. I just remember when I repeated the substance of the Speaker's statement he started discussing Mr. Collier.

Q Are you familiar with the new Senatorial District, District 11?

A No.

Q You are not familiar with it?

A No, I am not.

Q All right.

MR. BERG: We have no further questions at this time.

MR. CURRY: We have no further questions, Your Honor.

JUDGE GOLDBERG: During the conversations to which you refer, was ethnicity or the core part of the City the subject of any discussions between you and any of the parties that you have just mentioned?

A Not insofar as my conversation with the Speaker. I have a recollection that when I spoke to Commissioner Armstrong, he said something about 30,000 Blacks being pulled out of that Senatorial District.

JUDGE GOLDBERG: Thank you very much.

MR. BERG: We have nothing further.

JUDGE GOLDBERG: Are there any further questions?

MR. CURRY: No, sir.

JUDGE GOLDBERG: The witness may be excused. We will stand recessed until 1:35 P.M.

(At which time Court was recessed).

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JUDGE JUSTICE: Please be seated.

JUDGE GOLDBERG: Has the Plaintiff rested in this case?

MR. BERG: No, Your Honor, we haven't. We have just a very little additional testimony we would like to present, and since the structure hasn't been rigid, we are confused on depositions.

I would like to point out to the Court that we have the deposition, an advance copy of the deposition of Everett Collier and---.

JUDGE JUSTICE: I might state for the record so that the other Judges on the Court may know what has transpired, that it was agreed that all depositions could be considered whether they were actually offered in evidence formally or not, and that the parties were, if they felt any particular portion of a deposition was extremely relevant to their case, they were going to summarize it.

MR. BERG: That's what I would like to do quickly right now. In addition, I have got the deposition of Robert Spellings, the Administrative Assistant to Ben Barnes. We

don't want, of course, to be limited to our summaries.

JUDGE GOLDBERG: We understand.

MR. BERG: Now, on Page 19 of Everett Collier's deposition, the original of which is on its way to Court, we would like to call attention to Lines -- starting at Page 18 -- Line 25, through Page 7 (sic) of the next page, 19, and the summary of that is that in asking Mr. Collier whether or not he agreed with Searcy Bracewell's plan, which he had seen, for the senatorial districts, Mr. Collier said he thought it was a good plan and that it followed the purposes the Chronicle stood for if they were legal.

Robert Spellings' testimony was elicited at Page 122 that Mr. Bracewell submitted a plan that he received and used in drawing -- the question:

"Did Mr. Bracewell submit a plan?"

Answer: "Well, Mr. Bracewell brought me a copy of the plan, the Houston Chamber of Commerce plan."

And we would like to call particular attention to those two matters.

JUDGE GOLDBERG: Thank you very much. 150

Anything else?

MR. HELKIN: Yes, Your Honor. We would like to recall Professor Murray for two or three questions and also in Mr. Spallings' deposition -- and we will furnish the Court with the page and line -- there is also testimony by Mr. Spallings, we want to point out, which is that he had the Houston Chamber of Commerce plan before him when he drew what became the law.

If we could, we would like to call Professor Murray for a couple of questions.

MR. McDANIEL: Perhaps it is appropriate at this time to say we do not agree with Counsel's last statement in summary of the deposition.

JUDGE GOLDBERG: We will read the deposition and do our best to understand it.

MR. McDANIEL: Thank you, Your Honor.

MR. HELKIN: May the record reflect also, Your Honor, that the Houston Chamber of Commerce plan that we have been talking about with respect to the depositions is Plaintiffs' Exhibit 21.

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a witness recalled by the Plaintiffs, having been previously duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. NELKIN:

Q Professor Murray, a review of Mr. Spellings' deposition will indicate that Mr. Spellings testified that he drew the Texas Senate redistricting map in a total of three hours, excluding urban areas, and he will further testify -- or he further testified that he drew the urban areas in a total of approximately a day and a half.

Now, based upon your experience with dealing with census tracts and attempting to coordinate those with respect to drawing of lines that satisfy one-man one-vote, in addition to all the other considerations, such as core concept and contiguousness and compactness, would you say that that is a physical possibility?

A Not without working from some prior working plan. Actually, you would have to have at least a pretty

good outline of what you were going to do. If you start from scratch, just to deal with Harris County, to get the mathematical equality required in districts, it is going to take several hours, and that would just be by random association of districts that touch each other, but if you drew a plan in, oh, say, a half day, probably you would almost certainly have to be working from some guidelines that were pretty specific as to what you want to accomplish, and I think every districter who doesn't use something like the computer formula for locating supermarkets starts with some idea of what he wants to achieve.

JUDGE COLEMAN: Is this an Einsteinian or a non-Einsteinian answer?

THE WITNESS: Hon.

Q And it is also your testimony with respect to the districts that touch upon the core that you have examined in Plaintiffs' Exhibit 21, which is the Houston Chamber of Commerce's plan, there is a marked similarity between that and what became the law?

A I think the statistical probability of those two plans being unconnected is virtually nil.

JUDGE COLEMAN: Being what?

THE WITNESS: That those two plans are not -- that one did not influence the other,

that there is some causal relation between the Chamber of Commerce plan and the Board's plan. The similarities are so great that I don't think you could leave it to chance that they simply emerged that way.

MR. HELKIN: Thank you. We have nothing further.

JUDGE GOLDBERG: The Plaintiff rests?

JUDGE JUSTICE: Is there cross-examination?

JUDGE GOLDBERG: Oh, excuse me.

CROSS-EXAMINATION

BY MR. CURRY:

Q Mr. Murray, I believe you indicated that the ability to reduce it to a map would primarily depend upon the experience and background of the individual working with supplementary data.

Are you familiar with how long Mr. Spellings worked on the supplementary data at an earlier date?

A No.

Q Were you informed that Mr. Spellings spent a great deal of time during the session working on a plan?

A No.

MR. HELKIN: The deposition will speak for itself, I believe. We object to that characterization.

JUDGE JUSTICE: Any further testimony?

MR. HELKIN: Your Honor, I am not sure I understand the procedure here. We still have two exhibits that objections have been lodged against, and I don't understand if all exhibits are coming in subject to objection, or do we simply have to tender those?

JUDGE COLEMAN: Let the exhibit be tendered and let the objections be made either in writing or now, whichever you prefer.

MR. HELKIN: All right, then we will tender Plaintiffs' No. 5 and No. 6, which will be proceedings before the Legislative Redistricting Board on two separate days, and these proceedings are concerned with senate redistricting.

JUDGE JUSTICE: Now, what do these proceedings relate to? I don't understand. Are they verbatim transcripts of what occurred?

MR. HELKIN: Yes, that is correct.

JUDGE JUSTICE: What are the exhibits that you are referring to, what numbers?

MR. HELKIN: Five and six, Your Honor.

MR. CURRY: May it please the Court, we have this problem. Certainly, as far what was testified to before the Redistricting Board we would have no objection to its use for the purpose of showing what was said.

A multitude of people testified. They were not under cross-examination. Certainly we didn't have an opportunity to cross-examine them, so it is basically hearsay.

We would limit our objection to it being considered for the proof of the facts stated therein, but we have no objection for the purpose of showing what was said.

JUDGE JUSTICE: All right.

MR. HELKIN: Plaintiff rests, Your Honor.

JUDGE JUSTICE: Is the Defendant ready to proceed?

MR. JANORSKI: May it please the Court, we mentioned to Judge Justice the other day

that we were filing Motions to Dismiss, and these motions have been filed. We simply want to call the Court's attention that they are pending. If the Court desires, we are prepared to argue them at any time. It is our feeling under the testimony today produced our motion is good. The Court would prefer, I assume, for us to go ahead and introduce what we have, and then at some appropriate time the Court will hear argument. 15c

JUDGE JUSTICE: Yes, we can carry the motion along.

JUDGE GOLDBERG: We will carry the motion along until we complete testimony, right?

JUDGE WOOD: That's right.

MR. JANOWSKI: Thank you.

DEFENDANTS' CASE IN REPLY

MR. CURRY: May it please the Court, the Defendants at this time offer -- well, I will call the attention of Plaintiffs' Counsel to the fact that we followed the form of order,

and it says that the exhibits that we have listed here may be received in evidence and marked as herein indicated. I don't know whether they are aware of that, but they are apparently already received in evidence. 157

At this time we do offer in evidence exhibits -- these will be Defendants' Exhibits H-3, 4, 5, 6, 34 and 35. I will identify these for the Court's purposes.

JUDGE JUSTICE: Well, now, have objections been lodged to these particular exhibits?

MR. CURRY: Yes, sir. These are the only ones objected to.

JUDGE JUSTICE: All right.

MR. CURRY: Defendants' Exhibit H-3 is the Senate Resolution and Apportionment Map that was referred to earlier as being the resolution that Barbara Jordan made in the Senate. It is objected to.

(No omission here.)

JUDGE GOLDBERG: What is the basis of the objection?

MR. MELKIN: Your Honor, as I indicated earlier with respect to the map which Mr. Graves submitted, we feel that the only relevant map would be the one which is under attack, as well as the one that we proposed, as well as the one that bears a marked similarity, in our view of the case, to the one that became law and we see no relevance to the various proposals of other persons suggested to the Legislative Redistricting Board, enact as law, so we object to all of those on this ground.

JUDGE GOLDBERG: It will be received under the same ruling.

MR. CURRY: Your Honor, I assume -- I didn't develop it at the time, but basically, H-4, H-5, H-6 are, in effect, substantially the same. They are, in effect, proposed plans.

JUDGE JUSTICE: The same objection is made, I presume?

MR. MELKIN: Yes, sir, Your Honor.

MR. CURRY: Exhibits 34 and 35, Your Honor, the Defendants offered -- this is H-34 and H-35, these are compilations of the block

population in District 11 which was Senator Jordan's district for 1966 and for 19 -- the new District 11, and the Plaintiffs reserve objection to these, based upon accuracy. Is that correct? 159

MR. NELKIN: Yes, Your Honor. We have never seen these and we would just like an opportunity---.

JUDGE GOLDBERG: Yes, sir. And advise us in what respect you deem them inaccurate before we enter them.

MR. NELKIN: Yes, sir.

MR. CURRY: At this time, Your Honor, we would propose to summarize the deposition of Crawford Martin, Attorney General, who was, as the deposition reflects, a member under the Constitution of the Redistricting Board and I will simply generally summarize it and designate portions of it.

Attorney General Martin testified as to his personal background.

He testified as to the fact that the Board had several public meetings.

He testified that his instructions and his efforts were designed primarily,

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following the Chavez case, with a view to assuring the one-man one-vote rule and also within the framework of the constitutional requirements under those cases.

He testified there were any number of maps prepared under this program of putting together a final map with variations in order to assure the deviations were the minimum.

He testified that the guideline was without regard to race or color; that the guideline was the one-man one-rule and that there was never anything discussed or no intention that anything be planned to dilute or minimize or cancel out the vote of a black person or any minority group.

He testified that in his opinion, having worked on this plan with the other members of the Board, that he came to the conclusion that this plan was fair and in his opinion did not cancel, minimize or dilute the vote of the blacks in Harris County.

At this time we would offer into evidence those portions of Attorney General's deposition beginning at Pages -- Page 6 through 11, Page 105 through 113.

JUDGE JUSTICE: Actually, Counsel, 16
you are just giving us the portions you want to emphasize because the entire deposition is already in evidence.

MR. CURRY: Very good. That eliminates the problem I was confronted with, because we had not had an opportunity to do all of this.

Then under those circumstances, I would then propose to summarize the deposition of Lt. Governor Ben Barnes.

The Lt. Governor testified, of course, about his background;

That the Committee was required to come up with a plan;

That there were any number of plans proposed;

That there were any number of plans that they actually jiggered around trying to come up with the one-man one-vote requirement;

That all of the members of the Board were attempting to cooperate and come up with various plans;

That they worked with the Legislative Council;

That there again, they did not take

into account racial numbers in order to come up with a plan. That they strictly avoided that. It was primarily the one-man one-vote rule; 162

Other factors entered into it in terms of compactness, community of interest and things of this nature.

And I might point out that each of these men testified that you have got a problem when you get this idea of calling a line torture. All of them observed that there seemed to not be any rational basis for the rate of census tracts. And, of course, no one controls the number of persons within those tracts, and the number of persons and the shape of the census tract ultimately control the shape of the district because it is a one-man one-vote type of plan.

He testified, of course, that they had to allow on the Attorney General's Office for determination, in his opinion, whether or not any plan or whatever plan they were considering was constitutional within those frameworks.

He testified that there was never

anything done intentionally for the purposes of diluting or minimizing the vote of any minority group, and specifically the blacks in Harris County. 16

He testified that in his opinion the plan, as adopted, was fair to all concerned.

He did observe, and I would observe to the Court that nearly everybody observed that almost an infinite number of plans could be arrived at if you just simply took down the terms of numbers. But that it was designed to satisfy the requirements of the Chavez case and the Constitution as counseled by the Attorney General.

In his opinion it did not dilute, minimize or cancel the vote of the minority people in Harris County.

I believe that that suffices on that.

And with the Court's permission, I would request that Mr. McDaniel then proceed on some of the other depositions. We did not participate in each one.

(No omission here.)

JUDGE JUSTICE: Let me stop and ask you, does the Plaintiff desire to call attention to any facet in these depositions that have been summarized by Defendants' counsel?

MR. HELKEN: Your Honor, we thought that between the Defendants' summary of the deposition, if you are going to read the deposition, there is no reason for us to --

JUDGE JUSTICE: All right.

MR. McDANIEL: Also, presuming the Court is going to read all of these depositions that have been taken, and the only one that I wish to make any particular allusion to is Mr. Bob Spelling's Deposition. I refer to that deposition because it shows, as do the others, that Mr. Spelling, who is Mr. Barnes' administrative assistant, or his Executive Assistant, as he is called, actually drew the Senate Districts in Houston, as well as the Senatorial map. His deposition will show pretty well how it was done and why it was done.

I would emphasize particularly a few facets of the deposition. On page 125 of the testimony concerning the

percentages that had been checked to see what the Black percentage of Senator Jordan's old district, under the 1970 census, it was 39.8 percent and the new Senatorial District 11 was 39.9 percent.

His testimony on page 151 and 152 of the deposition where he was questioned about whether or not he had in his drawing of the thing considered a core concept and his testimony was that the innermost part of the City of Houston consisted of around 900,000 people. And that that was the core, that he did not agree that he had divided the centermost part of the City from the rest of it and goes on to testify that in his opinion three core districts were created.

Page 132, the directions under which he worked:

Question: "All right. What was your primary consideration other than the one man-one vote?

Answer: "Okay, with regard to Harris County, I think the next consideration was to draw the lines from

the middle out.

Question: "All right. But again, --

Answer: "And the next consideration was to try to avoid as much as possible any dilution of the Blacks."

We tender all of these depositions and as the Court has already indicated, to be read and considered for what they are worth. Thank you.

MR. CURRY: State rests, Your Honor.

JUDGE GOLDBERG: Does the Plaintiff have anything further?

MR. MELKIN: We have nothing further, Your Honor.

JUDGE GOLDBERG: The case will be closed.

JUDGE JUSTICE: Before we proceed with the rest of the cases, I want to bring to your attention a matter that has been of intimate concern to the Court Reporters. As you know, they are doing a daily copy called for for each of the members of the Court.

The Court Reporters have not been informed as to how many -- whether anyone

else wants daily copy. If so, they request that you -- the Court Reporters, that they be notified at the next recess.

Now, the Court is ready to proceed with the remaining of the cases. I notice that some of the attorneys are not present. Are they in the anteroom? Would the Marshal call for all attorneys to come into the Courtroom?

MR. MELKIN: Might I inquire as to the schedule of arguments? Will the case be argued, and if so, will it be at the close of all cases?

JUDGE JUSTICE: It is the wish of the Court that the arguments be considered all at one time.

JUDGE GOLDBERG: One can be used for the other and if that can be done, maybe the arguments can correlate.

MR. MELKIN: May we be excused then, until the time or arguments?

JUDGE GOLDBERG: Certainly. Be sure to keep in touch with the Court as to when that might come about. Hopefully, soon.

MR. CURRY: I believe Mr. Luna is

absent. 168

SENATOR MAHEY: Your Honor, Mr. Richards is on his way from the Capitol Building. We are marking exhibits pursuant to the pretrial order of yesterday afternoon. I think he can be reached by telephone very quickly.

JUDGE JUSTICE: I wanted to announce on behalf of the Court the procedure under which we intend to follow for the remainder of the cases and I assumed all counsel would be present. Since you are here, Senator Mauzy, you can relay this.

It is the desire of the Court that all of the remainder of the cases be considered together, and that we operate under this procedure;

That we have first the various claims made by the Blacks;

Secondly, the claims made by the Mexican-Americans;

and Thirdly; those of the Republicans.

I believe that takes care of the so-called minority groups. Is there

any objection to that procedure? 103
After all of the evidence in behalf of these various groups, is in, of course, we would expect that the Defendant would present his case. Is there any particular objection to this procedure?

MR. ARMSTRONG: For a point of clarification, if I may --

JUDGE JUSTICE: Yes, sir.

MR. ARMSTRONG: Do I understand that you will take evidence from the Plaintiff on the Blacks, the Mexican-Americans and the Republicans before the Defendants offer evidence on either of the three?

JUDGE JUSTICE: Yes, sir.

JUDGE GOLDBERG: Unless there be objections to this.

MR. ARMSTRONG: I have no objection.

JUDGE JUSTICE: Is there an objection from any of the Plaintiffs or from the Defendants?

JUDGE GOLDBERG: Do you think if we took a 10 minute recess we could all be ready to go, or what is the situation?

SENATOR MAHEY: I will certainly try,

Your Honor, to reach Mr. Richards right now. 170

JUDGE JUSTICE: I think Mr. Luna would be a very interested party in this, too.

MR. CUREY: Yes, and I don't see him, Your Honor.

MR. ARMSTRONG: Perhaps in 10 minutes we can find him.

JUDGE GOLDBERG: Let's take a 10 minute recess.

(At which time there was a short recess).

JUDGE JUSTICE: Please be seated. 171

At the Pretrial Hearing in this case the Court was informed that the Plaintiffs' case with reference to the Houston Division case would take approximately two days.

Upon further urging from the Court, it was decided that the case could be concluded in one day. The Plaintiffs in the remainder of the cases, I think justifiably, considered that it would take at least one day to conclude the Houston case.

I am informed -- the Court is informed that the Plaintiffs in the other cases are not at this time ready to proceed.

Are we correct in that?

MR. MAUZY: That's correct.

MR. RICHARDS: Yes, sir.

JUDGE JUSTICE: Would you be ready to proceed at 9:00 o'clock in the morning?

MR. RICHARDS: Yes, sir.

MR. MAUZY: Yes, sir.

JUDGE JUSTICE: How long, for the record, do you think it will take to conclude the Plaintiffs' entire presentation?

MR. RICHARDS: From Dallas and San Antonio,

and I guess I better watch myself. I'm not sure how many San Antonio witnesses will be called. I would think a day and a half at the outside for all of it, a day or less than a day for Dallas. 17

Mr. Idar, I suppose---.

MR. IDAR: I'm not sure that I will take a day and a half, Your Honor. I think I can probably do it in less than a day.

JUDGE JUSTICE: You are speaking about the Mexican-American case?

MR. IDAR: Yes, sir.

JUDGE JUSTICE: Well, let's do it on this basis.

How long do you think it will take to put on the black's case?

MR. RICHARDS: The Dallas case that we put on should not require more than a day unless something bogs down.

JUDGE JUSTICE: You are speaking about the blacks now?

MR. RICHARDS: The Dallas County case which is focusing on the blacks.

JUDGE JUSTICE: All right.

JUDGE GOLDBERG: What about Tyler?

MR. RICHARDS: I'm sorry. We have used the Dallas County in shorthand reference. That is really the Tyler case, Your Honor. That is Dallas and Tyler, all of our case---.

JUDGE JUSTICE: Well, now, we are speaking about all of the cases in their entirety.

How long do you think it will take to put on the case with reference to the blacks?

MR. RICHARDS: I think less than a day.

JUDGE GOLDBERG: Wonderful.

JUDGE JUSTICE: What about the Mexican-Americans?

MR. IDAR: Less than a day, Your Honor.

JUDGE JUSTICE: Then we have the Republicans. How long---?

MR. CROUCH: Half a day at most, Your Honor.

JUDGE JUSTICE: And what do you say---?

MR. EASON: Well, this is San Antonio Senate Republicans. Less than half a day, Your Honor.

JUDGE JUSTICE: I had thought that the Republicans were going to concentrate their efforts. Aren't you?

MR. CROUCH: Yes, Your Honor, we will as

much as possible. The San Antonio Republicans did raise an additional issue about the reapportionment for the Senate, which the Republican Intervenors from the Dallas and Tyler case only questioned the House Reapportionment Bill. 174

JUDGE GOLDBERG: Well, how many were here this morning when I made the initial statement?

(REPORTER'S NOTE: Indication was received from the courtroom.)

JUDGE GOLDBERG: Well, I am going to try again. I hate to be repetitious and boring.

I implore all of you to cooperate to every extent possible to expedite the termination of this case, because we are in a critical time factor. As I said this morning, there is no pre-judgment on the part of any Judge on this bench. We will listen, read the depositions, and give this case careful study. It is impossible to conclude but that at the end of this case when we come to judgment somebody -- somebody, somewhere is going to be disappointed and aggrieved, and we all feel that

that party, whoever he might be, must have ample opportunity to go upstairs where our correctors live in order that whatever is done can be set aside by the higher authority. 175

Now, to do that, we are going to have to have the utmost cooperation, and I implore all of you to do that, keeping it in mind, and we start tomorrow morning at 9:00 o'clock. We don't want to work anybody at night. I think it is an imposition on everybody. We appreciate the cooperation you have given Judge Justice in getting this case to the present status. We appreciate it, but we must keep on as fast as we can, because we have got a lot of reading and a lot of work and a lot of thinking to do. We ask you to help us.

Let's start tomorrow morning---.

(REPORTER'S NOTE: The Court here confer out of the hearing of the court reporter.)

JUDGE GOLDBERG: Oh, and Judge Justice suggested -- Defendants, do you have any idea how long it will take you, or will that

depend on---?

MR. McDANIEL: Your Honor, we have divided the efforts somewhat much as the Plaintiffs have done. I would anticipate that our evidence on the San Antonio matters will probably take a half day. It may be a longer estimate than warranted.

Before Mr. Luna gets up to give you an estimate on the Dallas situation, we took nine depositions here in Austin last week. Signatures were not waived on them. The Defendants -- and I speak for both Defendants now -- are willing to waive signatures on them and file them at this time so the Court can have something to spend its time on, if it is all right with the Plaintiffs.

JUDGE GOLDBERG: Is that satisfactory with everybody?

MR. RICHARDS: Yes.

JUDGE JUSTICE: They will be received in evidence.

JUDGE GOLDBERG: Now, Mr. Luna, do you---?

MR. LUNA: Yes, Your Honor, please the Court, on the matter of the depositions, we took depositions in Dallas this past week,

and all of the attorneys who were there, and there was somebody there representing each group, and we agreed to waive signatures on those depositions unless somebody objects, and if there is an objection, we need to know it so we can find the witness. We do have that agreement on those depositions.

JUDGE JUSTICE: Have they been transcribed?

MR. LUNA: Sir?

JUDGE JUSTICE: Have they been transcribed?

MR. LUNA: Some of them have. Some have not. There are supposed to be some on the plane coming down this afternoon. We anticipate that we will have them all by in the morning.

JUDGE GOLDBERG: What about the time factor?

MR. LUNA: On the time, we did a good bit of our testimony by depositions last week from the Defendants' standpoint in Dallas. We took the deposition of one black and one Mexican-American. We propose to have in addition to the several depositions

that we have, not more than three witnesses, 178
and their testimony should not run on direct examination longer than a total of 45 minutes.

JUDGE GOLDBERG: Thank you very much.

MR. RICHARDS: May we be told now who those witnesses are?

JUDGE JUSTICE: Yes, you are entitled to know.

MR. LUNA: Yes, we will have L. H. Brown.

MR. STEELE: Who?

MR. LUNA: L. H. Brown and William H. Clark, III, and I believe other than deposition witnesses, Your Honor, those probably will be all we will have, and if we have a problem getting them here, we might not use those.

JUDGE JUSTICE: Who is Mr. L. H. Brown?

MR. LUNA: Mr. L. H. Brown, Your Honor, is a black precinct chairman for many years.

JUDGE JUSTICE: I think I recognize Mr. Clark.

MR. LUNA: Yes, sir. We intend to qualify Mr. Clark as an expert. We would like to also know who their witnesses are

from Dallas, if they would tell us. 179

MR. RICHARDS: We have listed all our witnesses in the Pretrial Order in the case. If anything there will be less than---.

JUDGE GOLDBERG: How many are there?

MR. RICHARDS: We listed six, I think, Your Honor, potential live witnesses, as I recall, in addition to the depositions that have been taken.

As it now stands, they would be, again for the record, Rev. Zan Holmes, George Allen, Emmit J. Conrad, Dan Weiser, Senator Oscar Mauzy and then Dr. Clifton McClesky, who is our expert, and we might seek to qualify some of the others as experts in the sense of lay experts.

JUDGE JUSTICE: Now, that takes care of the State Democratic Executive Committee. That is for the Dallas case and the Tyler case.

MR. LUNA: Right, except we have one more problem, Your Honor. Several of us in the Tyler -- in those cases have evidence that is on its way down here, and Your Honor instructed us yesterday to have our exhibits

here and marked by 5:00 o'clock. We have just been told that the plane that was bringing some of several of the parties' evidence down is iced up in Kansas City, and we don't know how late it is going to be, but could we have until tomorrow to have those marked? 1:30

JUDGE JUSTICE: All right, I guess we can wait that long.

JUDGE GOLDBERG: Fine.

Anything else?

JUDGE JUSTICE: What about the Houston case? Does that take care of all of it?

MR. CURRY: Your Honor, we anticipate that is it.

JUDGE JUSTICE: That is it?

Where are the---? Are those the sole depositions that are ready for the perusal of the Court (indicating)?

MR. MADDY: No, Your Honor, we have a couple of Dallas depositions which have been transcribed that we could file with Your Honor's Clerk this afternoon. They are just physically not here in the courthouse right now.

JUDGE JUSTICE: I guess we could wait

until in the morning. 181

JUDGE GOLDBERG: Oh, yes.

JUDGE JUSTICE: I think this will constitute a good night's reading.

MR. LUNA: I have at least two more, if you need more.

JUDGE JUSTICE: These are pertaining to the Dallas situation?

MR. LUNA: Yes.

JUDGE JUSTICE: We will wait until tomorrow.

MR. McDANIEL: These are depositions of all five members of the Board and some of the clerical help who helped with the actual drawing.

(REPORTER'S NOTE: The Court here confer out of the hearing of the court reporter.)

JUDGE GOLDBERG: Court will stand in recess until 9:00 o'clock tomorrow morning.

(REPORTER'S NOTE: The Court then, at 2:40 o'clock, P.M., January 3, 1972, adjourned until January 4, 1972.)

DAN WEISER,

a witness called by Mr. Richards, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

MR. RICHARDS: Before proceeding, may I make one further matter, Your Honor? I want to introduce and have it appear on the record, Mr. John E. Collins, of Austin, Texas, who is associated in the presentation of the case and who will, in fact, be assisting us.

JUDGE GOLDBERG: Glad to have him.

JUDGE JUSTICE: What was the name again?

MR. RICHARDS: John Edward Collins, now of Austin and formerly of San Antonio. Is that correct?

MR. COLLINS: Yes, sir.

QUESTIONS TO MR. WEISER BY MR. RICHARDS:

Q Could you give us your full name, please?

A Dan Weiser.

Q W-e-i-s-e-r.

A Yes, sir.

Q Where do you live, Mr. Weiser?

A 3851 Rugged Circle, Dallas, Texas.

Q How long have you lived in Dallas?

A Since 1958.

Q How are you employed, Mr. Weiser?

A I am employed as a mathmetician for a major oil company research laboratory.

Q What is your educational background -- your higher education?

A I received a Bachelor of Arts in Mathematics, a Master's Degree in Mathematics and a Doctor in Mathematics from Rice University.

JUDGE JUSTICE: From where?

A Rice University.

Q Briefly, what is the nature of your work with the oil company by which you are employed?

A I apply mathematical techniques to research

problems in oil findings and also in terms of economic problems as well.

Q Are the techniques which you employ for the oil company, are those same techniques applicable or transferable to analysis of political returns?

A A number of them are. In fact, in the early 60's, I was invited to attend the first of the National Science Foundation sponsored seminars, entitled "Mathematical Techniques of Political Science," and these were held at S.M.U.

Q Have you then, over a period of time, employed the -- your training as a mathematician in the analysis of Dallas County election returns?

A Yes, sir, I have.

Q Do you have any part-time employment or moonlighting in which you are actually employed as a consultant in this respect?

A Yes. I have been employed in the past to do political analysis for candidates. Also, I was asked to be a consultant by an educational television station in Dallas, as well as by Southern Methodist University.

Q All right, sir. Independently of your activities in that regard, have you been a participant in politics in Dallas County?

A Yes, I have.

Q In what way?

A I have been a precinct chairman on several occasions.

Q Which party?

A The Democratic Party. And in 1964 through 1966, I was secretary of the Democratic Executive Committee.

Q The County Democratic Executive Committee?

A That's right.

Q In addition to that, have you worked in political campaigns for the candidates?

A Yes, sir. In the 1960 Presidential campaign, first Presidential campaign, I was in charge of the last three days of campaigning activities and in the 1964 campaign, I was in charge of the precinct campaign for the Democratic Presidential Candidate.

Q All right, sir. Have you made any effort to study and analyze Dallas County election returns?

A I have for --

Q -- over what period?

A For over 10 years.

Q Has any part of this study focused on returns in the predominantly Negro precincts of the County?

A Yes.

Q Over what period of time?

A I looked at those starting with the City election, actually, of 1959.

Q All right. And maintained that kind of study from 1959 down to date? Is that correct?

A Yes, I have.

Q All right. Have you prepared for us certain amounts based upon the 1970 and 1960 census data as regards Dallas County?

A Yes.

Q All right. Would you tell us what you have there -- the first one in your hand, I believe, is already identified or marked, rather, as Plaintiffs' Exhibit 1?

A Yes. That's correct. This is a Dallas County census tract map prepared by the Texas Legislative Council, and on it I have shaded in red from the census information of 1960, all those tracts which are over 50 percent non-white. This was the classification in 1960 census. And in orange I have shaded all of the tracts that are over 50 percent Negro in the 1970 census. And these include all those shaded in red. That is every tract that was over 50 percent non-white in 1960 is now over 50 percent Negro in 1970. Now, in addition to this, there are

some lines on tracts. The red lines signify a percentage between 30 and 50 percent of the non-whites in 1960 and the red -- I am sorry -- the red do this and the orange for 1970, and 30 to 50 percent Negro.

Q One question, Mr. Weiser, you have used "Negro" and "non-white", I think. "Non-white, with respect to 1960 and "Negro" with respect to 1970?

A Yes. These were the census classifications in Dallas County. There are very few Orientals or Indians in the non-white category, so for all practical purposes, the non-white category would be the Negro category for 1960.

Q Then if I understand Plaintiffs' Exhibit 1, if one looks at the totally shaded parts, they reflect, taking together the red and the orange, all precincts, or rather census tracts in which the population is presently, as of the 1970 census, in excess of 50 percent Negro? Is that correct?

A That's correct.

Q And by contrasting the red and the orange, I take it we see those areas between 1960 and 1970 that have become predominantly Negro in that decade? Is that correct?

A Yes, sir.

Q What does it reflect in terms of the movement?

A Well, if you look at the original 1960 shading, you will see the non-white or predominantly Negro population in what is termed South Dallas, near North Dallas and West Dallas. And also, a census tract out in Grand Prairie. Now, in addition, there was a dense Negro development of Hamilton Park, which is shown at the top of the map.

Q That is up on the northeast corner? Is that correct?

A That is about north central.

Q Right.

A However, the tract boundaries were much larger than the development and therefore, it only shows up as between 30 and 50 percent.

Q What are actual facts with respect to the Hamilton Park subdivision?

A Oh, it must be close to 100 percent Negro.

Q All right. Excuse me. You were going to say something else?

A I was going to describe essentially how many -- what percent of the non-white population in 1960 was included in the shaded areas.

JUDGE WOOD: What do you include in "non-white"? Do you have Mexican-Americans as non-whites?

A No, sir. Just the Indians, Orientals and Negro.

Q This was a census classification, is that correct, in 1960, Mr. Weiser?

A Yes, sir.

Q And the non-white category included Negro, Oriental and Indian? Is that correct?

A Yes, sir.

Q And I think as far as Dallas County is concerned, that the Negro population comprises some 98 or 99 percent of the non-white? Is that correct?

A That's correct.

Q All right. You were going to tell us, I think, referring to shaded areas, what percent of the Black or Negro population reside in the shaded areas? What percent of Dallas County's total -- I am fumbling there -- excuse me. What can you tell us about the concentration?

A All right. In 1960, 80 percent of the Negro population included in the shaded red areas.

Q The totally shaded red areas?

A The totally shaded. That means that the other areas have not been counted. Now, by 1970 in the

orange and the red areas, 90 percent of the Negro population in Dallas County is included in these shaded areas.

Q By that, totally shaded areas, you are talking about the totally shaded?

A Totally shaded.

Q That is not included in the areas in which there are lines drawn? Is that correct?

A That's correct.

Q What percent of the population in the shaded areas was Negro or non-white in 1960?

A Close to 90 percent.

Q And in 1970?

A The same. Close to 90 percent.

Q So, in effect, we have -- if I am correct, that the shaded areas reflect at this point areas in which 90 percent of the population is Negro and that, in turn, constitutes roughly 90 percent of the Negro population of Dallas County?

A That's correct.

Q Well, at least from this analysis, do you have any conclusions as to the -- whether or not there is more or less housing segregation in Dallas County in 1970 than there was in 1960?

A After looking at this, although this is just one measure, I would say there is more housing segregation in Dallas in 1970 than there had been in 1960.

Q Now, you have a second map. Can you put it down?

JUDGE GOLDBERG: What percentage of the Negro population is there to the whole population of Dallas County?

A In terms of the County, it is close to 17 percent.

JUDGE GOLDBERG: In 1970?

A Yes, sir.

JUDGE GOLDBERG: 1960?

A It is a little less. I have that --

Q -- I think it is a little over 14.

A 14.7. Close to 15 percent.

Q While you are at it, you might tell us if you know, do you know taking the City of Dallas, as opposed to the County of Dallas, what percent of the population of the City of Dallas was Negro in 1970?

A Yes. This is more dramatic. In 1970, 24.9 percent -- almost one out of four inside the City of Dallas are Negro, but in 1960, only one out of five, 19 percent. So in other words, growth in the Negro population

as you can see here, has been within the City.

Q All right, sir. You have a second map. I know it is somewhat more bulky -- may I approach --

JUDGE GOLDBERG: Go ahead.

Q This is Plaintiffs' Exhibit 2, Mr. Weiser, and can you tell us what it is or what it reflects?

A Yes. This is just shading the orange and red areas.

JUDGE GOLDBERG: Excuse me. Mr. Curry, come around.

MR. RICHARDS: Excuse me, Mr. Curry.

Questions by Mr. Richards:

A In the first place, the base map is a precinct map of the precincts in 1970 and the shaded area is the area taken from the census tract maps of the tracts that are fifty per cent Negro or more.

Q Do I under basically the map too is simply transferring the information of the census tracts onto a precinct map of Dallas County?

A Yes.

Q So, your testimony with respect to the shaded areas on map 2 would be the same as the ninety per cent of the Negro population in Dallas County in the shaded area, is that correct?

JUDGE GOLDBERG: By "precinct" do you mean voting precinct?

MR. RICHARDS: Yes.

A And the little white areas that are completely shaded inside the orange ones show the precinct numbers.

Q By looking at map 2, at least, we can actually see the precinct numbers-- the voting precinct numbers of those precincts which in 1970 were in the category of predominantly Negro, is that correct?

A Yes, that is correct.

Q And, I take it the downtown area of Dallas,

at least, separates in part those two major orange chunks, is that correct?

A Yes. That is, the white area, part of that 315 that is circled, the real downtown area, I guess would be that part of 315 and 309 which is directly above that. These are essentially, of course, low population-- very low population there.

Q All right. Okay. I think that is all. I didn't mean to involve everybody in that one.

JUDGE JUSTICE: Do you have some kind of something we can put those maps on?

MR. RICHARDS: I tried to find one.

THE CLERK: I don't think we do.

MR. RICHARDS: I tried to find one before we came in this morning.

BY MR. RICHARDS:

Q If I may approach the witness, referring briefly again to your map number 1, we find a shaded area in census tract number 161, is that correct--

A That is correct.

Q --At the far western point of Dallas County. Can you tell us essentially what that is, if you know?

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A Yes. That is-- most of the tract consists of Negro housing projects in Grand Prairie.

Q Public housing projects?

A Yes, that is correct.

Q Now,-- And, I believe you have already testified with respect to Hamilton Park, that is tract 66--

A No, it is 7802.

Q All right. This one big white glob here, 4.03, can you tell us essentially what that is?

A That is Love Field.

Q The airport area?

A That is the airport area.

Q Thank you. I think I may have asked you, but have you identified those precincts which over a period of time fall within the predominantly Negro areas of Dallas County?

A Yes. Using the 1970 census tract information, putting on the precinct map, you can determine which precincts are predominantly Negro.

Q Now, of course, precinct numbers change from time to time, is that correct?

A Yes, that is correct.

Q Have you traced those precincts back to 1960, the predominantly Negro or Black precincts?

A Yes. But, it is a little more complicated. You take the 1960 tract information and shade it on a 1960 map and you get the 1960 precincts and then, in essence, you follow the migration of the Negro population from 1960 to 1970, coloring the precincts as you go along. There is some objectivity that can be applied to the election of Negro precinct chairmans and just looking at the housing factor.

Q All right. Well, you have got before you copies of your Exhibits 3-- Can you tell us what Exhibit 3, then, is in that regard?

A Yes. For the years, 1970, 1968, 1966, 1964, 1962 and 1960 these are all of the precincts in the predominantly Negro areas and it is termed "Negro block".

Q Is that your term?

A That is correct.

Q And, by precinct, again, we mean voting precincts of Dallas County?

A That is correct.

Q And, presumably applying those precinct numbers to the election returns of Dallas County some conclusions can be drawn with respect to the voting patterns of the Negro block, is that correct?

A That is correct.

Q And, your Exhibit 4 is what, Mr. Weiser?

A Exhibit 4 shows the forty-five predominantly Negro tracts in 1970 with the population of each tract and total. It shows--

Q What was the total Negro population in those forty-five tracts?

A I am sorry. This gives a total population in those tracts of almost 222,000.

Q All right, sir. Now, these are the same tracts that appear on your maps, is that correct?

A Yes.

Q All right. And, your Exhibit 5 shows what, Mr. Weiser?

A Exhibit 5 shows the Negro population of these forty-five predominantly Negro tracts, it is set out, and also the total is found to be close to 198,000, which means that close to ninety per cent of the area is Negro.

Q All right. Within the tracts-- I believe this is from your testimony given before-- this substantiates the testimony before.

A In addition, the same calculations are made for the twenty-four predominantly White tracts of 1960.

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And, in addition the population is computed, the Negro population, was computed in 1970 in terms of the old red and the orange. And, it turns out again that approximately the same number of people still live in the red area in 1970 that lived there in 1960. And, all the new Negro population is shown in the orange area. That is, it is not-- there aren't more people now living in the red area.

JUDGE GOLDBERG: State that again, the last.

A There are approximately the same number of people living in the red area in 1970 that lived there in 1960 so that all the new population, Negro population, has moved out to the new orange areas.

JUDGE GOLDBERG: The orange area being adjacent to the red?

A Yes, sir.

BY MR. RICHARDS:

Q What you are really saying is the density of the population has not significantly increased in the old tracts that are heavily Negro in 1970?

A Or decreased.

Q Or decreased, for that matter.

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A Right.

Q Now, let's see. Would you tell us about what Exhibit 6 is?

A Exhibit 6 lists the per cent Negro in the tracts, in the forty-five tracts, and also gives the exact percentage of Negro in the thirty to forty-five tracts, which there are five.

Q All right, sir. And, Exhibit 7?

A It does the same thing for the 1960; the twenty-four predominantly nonwhite tracts.

Q Excuse me. Let me get a copy of that. All right, sir. And, finally your Exhibit 8 is one reflecting Negro registration or registration, I guess, in the Negro block precincts, is that right?

A Yes, it does both.

Q Could you explain that to us?

A Yes. It shows the-- taking these precincts and just adding up the registration.

Q All right. Taking those precincts, which you have denominated "Negro block precincts".

A That is correct.

Q You have attempted to calculate the Negro voter registration is those precincts, is that correct?

A Yes. Taking the records from the Tax

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Assessor-Collector's office and adding up the number of registered people in those precincts.

Q All right. Does it show any significant increase over the period of time from 1960 to 1970?

A Yes. In 1960 there were about 24,000 people registered in those-- in this Negro block. In 1962 it stayed approximately the same. It just about doubled in 1964.

Q What explains that, if you know?

A It is my opinion that the removal of the pole tax as a requirement for registration, plus our efforts, taking advantage of that, increased this to almost double, to 48,000.

Q All right, sir.

A Then, since that time it has essentially grown with the population, so that by 1970 there were close to 83,000 people registered in the Negro block. And, that accounts for close to seventeen per cent of the registered in Dallas County.

Q So, what you are saying is that the registered-- they vary almost directly to the proportional population in terms of that?

A That is correct.

JUDGE GOLDBERG: What deviation is there

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between Black and White population?

A Well, it would be very little, because 16.7 per cent of the population in the county-- I am sorry, 16.6 per cent of the population canvassed Negro and 16.7 per cent of the registered voters-- so it is extremely close.

Q All right, sir. Now, have you prepared also a list of all the contested legislative races in Dallas County, that is, races in the Democratic Primary for the House of Representatives over a period of time?

A Yes, sir, I have.

Q What exhibit is that reflected on?

A This is Exhibit 9.

Q O. K. Have you made some attempt to analyze these contested races over the last ten years?

A Yes.

Q First -- excuse me -- what does it reflect in terms of the frequency of contested Democratic Primary elections with respect to the House seats?

A Well, there weren't very many.

Q Essentially uncontested. Is that correct, over the years?

A Yes, in most cases just when a new seat opened up, that is, with incumbents they are pretty much left alone with few exceptions.

Q Just as a general matter -- we have the records in -- has there been any meaningful participation in the Republican Primary in Dallas County over this ten-year period---?

A No.

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Q ---with respect to numbers?

A Not compared to the number of people who vote and take part in the Democratic Primary.

Q Dallas County continues to be in terms of primary votes, at least, essentially a one-party county. Is that correct?

A That is correct.

Q Have you taken in analyzing your election returns -- have you taken a look to see how these predominantly black precincts vote in November in the General Elections?

A Yes, I have also done that.

Q What does that reflect?

A Well, over 90 percent of the vote in this block is for the Democratic candidate, the major Democratic candidate. That is, if it is a Presidential year for the Presidential nominee of the Democratic Party, and if it is an off year, say, for the Governor -- as a rule the Governor -- there are some exceptions there, but for the U. S. Senate nominee.

Q In analyzing these returns, does it appear to make any appreciable difference whether there are legislative candidates on the Democratic primary ballot as Democratic nominees in November who seek to appeal to the residents of the black ghetto?

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(REPORTER'S NOTE: There was no audible response from the witness.)

Q Do you understand my question?

A No.

Q In looking at the election returns over the last ten years and the extent to which the residents of the black or Negro precincts have voted Democratic, does it appear to make any difference in the percentage of vote for the Democratic nominee at the head of the ticket, whether there are included as Democratic nominees legislative candidates who make specific appeals to the black ghetto residents?

A No, it makes no difference at all that I can see whether or not candidates favorable to or of interest to the Negro block are included as far as the turn-out goes.

That is, it depends on the Presidential nominee of the rest of the activity for the ticket.

Q All right, sir. I'm sorry, could you tell us what your Exhibits 9 and 10 are so we could have them at least explained on the record?

A Using the other exhibits, the other maps, that were shaded in order to find out which precincts were

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in the Negro block over the years for each election, for each contested legislative race between 1978 and 1960, I then just added up the votes there to find out, to essentially split the vote up into three parts -- into two parts -- sorry -- into the Negro block, what happened to the Negro block, what happened in the remainder of the county, called the white block, and then, of course, the total county, and these are listed here in terms of the percentages for a particular candidate, and the particular candidate was chosen in each case, primarily for some order and some convenience, was the candidate who received a plurality or a majority of the Negro area; that is, the candidate who received the highest vote in the Negro block is the one whose percentage is looked at in terms of what kind of vote did he get in the Negro block, what kind of vote did he get in the white block and what happened in the total county.

Q Let's see. Have there been during this period of time that you have studied how many Negro candidates facing contested primary races for legislative seats in the Democratic primary within the primary?

A Within the Democratic primary there was one Negro candidate in 1966 with a contest.

Q Who was that?

A Joseph Lockridge, and he faced two white

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candidates, Ben Lewis and Mrs. Joan Ball, and then in the 1970 Democratic Primary there was again a Negro candidate, Berlaind Brashear. 217

Q Can you spell that for the reporter?

A The first name is B-e-r-l-a-i-n-d, and the second name is B-r-a-s-h-e-a-r.

REPORTER: Thank you.

Q Has there been one other contested race involving a Negro candidate in Dallas County, special election race?

A Yes, there has been a -- well, there have been two.

Q Two?

A Two special election races, one in the early sixties, which was the special election, November 9, 1963, where L. A. Bedford ran against 14 others.

Q Bedford was a Negro?

A Bedford was a Negro.

Q All right.

A And also there was a special election in June of 1968, June 18, 1968, and Representative Ian Holmes ran against -- the records are not available as to how many others.

Q A large field of candidates?

A A large field of candidates.

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Q Of the four Negro candidates who stood for the Legislature, how many won?

A Joseph Lockridge won and San Holmes won.

Q And Brashear and Bedford did not. Is that correct?

A Brashear and Bedford lost, Brashear in the Democratic Primary and Bedford in the special election.

Q Can you tell us in your judgment based on your observations what distinguishes the race between those that were winners, that is, Lockridge and Holmes, as distinguished from the losers, Bedford and Brashear?

A Yes. In my opinion Lockridge was a slated candidate.

Q By whom was he slated?

A He was slated essentially by the DCRG.

Q That is the Democratic Committee for Responsible Government. Is that correct?

A That's correct.

Q Was the same true of Holmes?

A The same was true of Holmes, that is correct, and Brashear was not.

Q And Brashear was not?

A And Bedford was before the formation of the DCRG in formal organization, but he was not endorsed

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by any of the same groups that now make up the DCRS. 219

Q Does the DCRS in your observation dominate the Democratic Primary as regards the selection or the nomination of the candidates for the State Legislature?

A Yes, it does.

JUDGE GOLDBERG: Was there a black Republican ever---?

MR. RICHARDS: Yes.

Q If you know them, Dan, why don't you tell us?

A There have been several black Republicans placed on their slate.

Q They don't have contested primaries?

A Usually unopposed. Joe Kirven was one.

REPORTER: What is his last name?

THE WITNESS: K-i-r-v-e-n, I believe.

A There was another one, as well, in an earlier year.

Q Well, I think that we may have it otherwise established in the record by exhibits.

Mr. Meiser, based on your analysis of the election returns of Dallas County and your observation of the contested primary races in the Democratic Primary, what is your opinion as to whether a legislative candidate in the primary must make some appeal to the black precincts

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in order to receive the nomination?

A Based on all the elections from 1970 to 1960, all of the contested legislative races, it made absolutely no difference to a candidate's winning or losing in terms of the vote he received in the Negro block.

Each candidate who won, won without or in spite of the Negro vote, and each candidate who lost would have lost without the Negro vote; that is, if you look at the winners and losers from the white block alone, these are the winners and losers.

Q All right, sir. Do you even have any -- do you have any opinion as to whether, indeed, a candidate may run on a program hostile to the interests of the black community and still, nevertheless, receive the nomination?

A Yes, we have an example of that in the 1970 primary where material that you have alluded to earlier was received, and even though---.

Q Excuse me. What kind of material are you talking about?

A This is material from the DCRC---.

Q It was put out in the white precincts?

A That was put out in the white precincts.

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Q All right.

A Even though this material was sent, and even though the Negro candidate received 90 percent of the vote in the Negro block, he received only 28 percent of the vote in the white block, and over-all he received 42 percent of the vote, so he lost.

This was true of another candidate who was slated with him.

Q Who was that?

A This was Bill Stehr, who was a white candidate.

Q Based on your analysis of the election returns and your observation of these contested primary races in the Democratic Primary, what is your opinion as to whether an independent black candidate, that is, one not endorsed by the DCRS, or, for that matter, a white candidate appealing to the black voter can obtain a nomination in the Democratic Primary?

A I think it is impossible for him to obtain the nomination under these circumstances.

Q Without the support of the DCRS?

A Without the support of the DCRS.

MR. RICHARDS: We pass the witness.

There may be other Plaintiffs who desire

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to examine. I'm not sure.

(No omission here.)

Cross Examination of Weiser

MR. GEE: Your Honor, at this point --

JUDGE JUSTICE: Identify yourself, please.

MR. GEE: Gee. G-e-e. At this point of the procedure it comes to my mind --

JUDGE GOLDBERG: -- step up to the podium, please.

MR. GEE: Yes, sir. Some points of procedure come to my mind. I understood yesterday, your Honor, we were going to attempt to take the question of the Blacks and then have the Mexican-Americans and then have the Republicans. Should I then confine my questions to this witness to matters involving the Blacks, or, since he may be gone by the time we get to the Republicans --

JUDGE GOLDBERG: Develop your whole case.

JUDGE WOOD: Develop your whole case to save time.

MR. GEE: Very well, Your Honor. One other point, Your Honor, we have exhibits here also, a small number which -- some of which are from Mr. Crouch, who is

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unavoidably away, and will return this afternoon, and one from myself. Should we put them in at a time when we come to the Republican matters, rather than trying to put them --

JUDGE GOLDBERG: -- are you going to interrogate the witness with respect to them?

MR. GEE: No, I am not.

JUDGE WOOD: Wait on these.

MR. GEE: Very well, Your Honor.

MR. RICHARDS: I have assumed now, we have offered all of the exhibits that are listed on our attachment here, and have been exhibited to the Defendant, and I assume they are received. Is that correct? Some 90 or more exhibits?

JUDGE JUSTICE: Any of the exhibits which you have listed in the final pre-trial order to which no objection is made in the final pretrial order is received in evidence. Now, if there is any objection made to these exhibits, it should be called to the attention of the Court.

MR. RICHARDS: Excuse me for interrupting.

MR. LUNA: If it please the Court, we have each exchanged the exhibits. We have not physically listed them in the pre-trial order, but we have shown all of our exhibits to them and they --

JUDGE JUSTICE: -- why have they not been listed? That was the order and direction of the Court.

MR. RICHARDS: We have a list here and we can attach them to the pre-trial order. We don't have the pre-trial order, Your Honor.

JUDGE JUSTICE: Have there been such a list made by the Defendants?

MR. LUNA: We have made such a list, Your Honor.

JUDGE JUSTICE: See to it that it is attached to the final pre-trial order.

MR. LUNA: Yes, sir. Some of ours, and as we started to trial, some of theirs was still being marked.

MR. RICHARDS: Excuse me for the interruption.

MR. GEE: I have a list also, Your Honor.

JUDGE JUSTICE: You are just going to interrogate this witness as I understand, in relation to the Republican party?

MR. GEE: That's correct. And I will have very few questions. These are essentially the stipulations I attempted to obtain at the pre-trial.

CROSS EXAMINATION

Questions by Mr. Gee:

Q Would you tell me, sir -- I realize this may seem so obvious that it is foolish to ask, but would you tell me whether, in your opinion, based upon your observation and experience which you have related to the Court, it is more expensive to run a campaign from a legislative standpoint in a multi-member district situation, such as Dallas, than in a single member situation

of essentially or close to the ideal size, 74,000 voters?

A Yes, sir. It is more expensive.

Q Do you have any idea how much more expensive? How many voters are in Dallas County, roughly speaking?

A We have close to a half million. We had close to a half million last year and for the preceding two years.

Q All right, sir. And I suppose it follows that if one of 18 or 19 Legislators or candidates for the Legislature wishes to be elected, he has to plan at least to make some sort of approach to a half million people?

A Yes. There would be some savings, of course, if you were working with a slate, as opposed to one candidate over the entire country. But you are still trying to appeal in terms of mail and media to the half million voters.

Q As opposed to about -- I believe the ideal figure for Texas has been testified to be about 74 or 75,000?

A That's correct, yes.

Q So in some ratio, perhaps not that obtained by comparing 75 to a half million, but in perhaps some multiple of 75,000, it would be more expensive?

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A Yes. That's correct.

Q Have you any opinion, sir, and I realize it is a little difficult to get hold of -- have you any opinion as to whether and again, I don't want to press you beyond what you feel your qualifications are, whether a representative from a single-membered district is more likely to be in touch with the wishes and desires politically, of his constituents than one who has to represent all of Dallas County or essentially all of it?

A Yes. I have strong opinions there.

Q Would you tell the Court what these opinions are, if you please?

A Yes, sir. I feel very strongly that the candidate and also the elected official in a single-member legislative district can much more easily keep track of the wishes of his constituents than can one at present from one of 15 or one of 18. From my own personal experience, dealing and discussing matters with members of the Legislature, when there are 15, then it is rather difficult to know who is yours; if you have one, in fact. And so it is sort of more difficult to find out really where you should really go. It is also, of course, more difficult to keep track of what he is doing. In fact, sometimes it is difficult to even know the names of all

of them.

Q May I ask you, sir, if in your view there are recognizable -- what you might call, to transmute your phrase a little bit -- Republican block, geographical areas in Dallas County?

A Yes, sir, although you wouldn't find them, of course, using the census tract information, but I think in fact, I have done this for political campaigns in the past. You go ahead and find a pattern that repeats itself over and over again in these elections, the November elections, and you look first at the 80 to 100 percent Republican areas in terms of their vote for the Presidential nominee and you look at the 70 and the 80 and the 60 to 70, and you can make or see areas that election after election stand out and remain in this category. So I would say it is a rather standard way of doing this.

MR. CHE: May I approach the witness, Your Honor?

JUDGE GOLDBERG: Yes.

Q And this is going to have to be rough, of course, but Plaintiff's Exhibit Number 1, sir --

JUDGE JUSTICE: -- speak a little louder, please, Mr. Che.

MR. CHE: Yes. I beg your pardon.

Q I am holding it with the north end up. Can you indicate to the Court in a general way what the geographical location of this Republican block would be, sir?

A Yes. Usually, you think of it as starting close to the Park Cities here which are shown here. Of course, you skip the Negro area here and you continue going north, and also, usually west, including Irving, and it also goes around White Rock Lake here and on, including Richardson and probably stopping at Garland; not going into Garland.

JUDGE JUSTICE: Do you have an objection?

MR. LUNA: Yes, sir. Without making these objections repeatedly, if it please the Court, we do want to point out that we do object to the conclusion that a person is a Republican simply because he may have voted in a Presidential election for the Republican candidate for President. Pre-trial order shows that a person joins either the Republican Party or the Democratic Party in Texas by participating in the primary of that party, rather than by voting for some particular nominee in the general election.

MR. GEE: Thank you, sir.

Q I have reference to those who vote regularly Republican in the general election. Is that what you have been describing, sir?

A Yes, sir. There is usually a -- quite a bit of straight party voting and therefore, when you find a vote for a Presidential candidate, quite often it carries over to the major Republican candidates that were voting for the Republican candidate or, of course, the Democratic ones.

Q May I ask you, sir, going back to this -- I had asked your earlier if you feel it was more difficult for a representative to understand or keep in touch with the wishes of his constituents in a multi-member situation than in a single member one. What about the constituents? I believe you said in passing that it was kind of hard to tell who was your man or if you had a man. That is why I am asking.

A Yes, sir. Would you repeat the question?

Q The question is whether the constituents, the voters, are likely to find more difficulty in knowing what the candidates are for or what their past records are?

A Yes. Of course, as I said, it is difficult to tell even who they are, let alone to tell what

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they stand for in this case.

Q Two more questions. Does the multi-member district situation, in your view, place a premium on the well-financed candidate?

A Would you repeat that?

Q All right, sir. Bearing in mind the cost of television and matters of that sort, does the multi-member district situation in Dallas County, as opposed to some appropriate single member system, favor the well-financed candidate?

A Yes.

Q And why do you say that, sir?

A Well, because of the cost of the campaign, unless under very unusual circumstances, the person is already well-known to the million, three hundred thousand people in Dallas County. So, just the cost of getting name familiarity, to some extent, is extremely expensive.

Q Pretty well rules out door-to-door campaign?

A Completely.

Q All right. In fact, it might tend to favor the candidate supported by those able to make substantial financial contributions to his campaign against

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a candidate who was supported by those who are not.

A In Dallas County, as a whole, I think that is correct, sir.

Q Do you know anything about Harris County, sir?

A Well, of course, I went to school there for eight years and I am familiar with, in a general way, the County and the County politics.

Q Well, sure, I don't want to press your expertise.

MR. GEE: This is my second question, may it please the Court. I regarded his answer as to the first one.

Q I don't want to press your expertise beyond what you feel the limits are, but can you think of any reasons other than political reasons for having multi-member districts in Dallas County and single member districts in Harris County?

A No, sir.

MR. GEE: Thank you.

MR. CUNNINGHAM: May it please the Court, my name is E. Brice Cunningham and I represent three of the Black Plaintiffs, Counsel George [illegible] Allen, Representative A. W.

Holmes, Junior, and School Board Trustee, Dr. E. J. Conrad. If the Court would allow, I would like to ask Mr. Weiser two questions.

CROSS EXAMINATION

QUESTIONS BY MR. CUNNINGHAM:

Q Mr. Weiser, you have indicated that Representative Joseph Lockridge was endorsed by the D.C.R.G. and was slated in the Democratic primary. Is that correct, sir?

A That's correct.

Q And that he won?

A That's correct.

Q Do you have an opinion whether or not he would have won if he had not been endorsed by the D.C.R.G. and slated with the other 11 candidates?

A Yes, I do have.

Q And what is that opinion, sir?

A He would have lost.

Q Okay. With respect to Representative Zan W. Holmes, Jr., who was also slated with 14 other candidates and ran with the endorsement of the D.C.R.G., do

you have an opinion whether or not he would have won or lost, sir?

A I do.

Q Would he have won or lost?

A I believe he would have lost.

Q Okay. In other words, the two candidates that have won, in each case have been slated, supported by the D.C.R.C. and won?

A That's correct.

Q And if they had not had this support and had not been slated, it is your opinion that they would have lost?

A Yes, sir. Because the test, as I see it, was the Berlin-Beehner race. And in that case, he was not slated and he lost.

MR. CUNNINGHAM: Thank you, sir.

MR. RICHARDS: Before I pass this, could I get two exhibits -- he has referred to two exhibits in his testimony and I would simply like the record to reflect the numbers which he had in mind. May I do that, Your Honor?

JUDGE GOLDBERG: You may.

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REDIRECT EXAMINATION

QUESTIONS BY MR. RICHARDS:

Q Mr. Weiser, in response to my questions, you referred to certain D.C.R.G. mailings that were put out during the course of the Democratic primary run off in which Berlin Basheer was a candidate?

A Yes, sir.

Q I want to hand you what has previously been marked as 54 and 55 and ask you if these are the two mailings that you had in mind, or which, if either one of them, you had in mind?

A Yes. The material here in 54 -- this is the same as the material that was mailed out in a number of the precincts.

Q White precincts?

A The white precincts that I have seen before.

Q And it was that mailing that you referred to, having the specific racial connotation that led you to feel that the independent Black would be unsuccessful in Dallas County? Is that correct?

A That's correct.

MR. RICHARDS: Thank you, sir.

That's all we have. Pass the witness.

MR. EASON: Your Honor, I have two or three questions I would like to ask.

JUDGE JUSTICE: All right.

MR. EASON: My name is Nathan Eason and I represent the San Antonio Republicans and I would like to ask two or three questions.

CROSS EXAMINATION

Questions by Mr. Eason:

Q. Mr. Weiser, in order to correlate the San Antonio situation, if I can, with the Dallas. Now, you stated in Mr. Gee-- in answer to his questions-- that it would be more costly to conduct the campaign in a multi-member district than in a single-member district.

A Yes.

Q Would this also be true in Bexar County?

A I would think so.

Q You also stated, as I recall, that the elected official could be closer to the constituency involved and the problems covered and the constituents could be closer to the official in a single-member district?

A Yes.

Q This too would be true in Bexar County,

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wouldn't it?

A Yes.

Q And, you first stated there was an identifiable Republican area in Dallas County. And, I realize that you may not be familiar with Bexar, but do you know whether or not there is an identifiable Republican area in Bexar County?

A No, sir, I do not.

Q You further stated that you didn't know of any reason, any political reason, why Harris County should have single-member districts and Dallas County have multi-member districts?

A That is correct.

Q Do you know of any reason why Harris should have single-member districts and Bexar should have multi-member districts?

A No.

Q And, I further believe you stated that the multi-member districts favored the wealthy candidate. You weren't just confining that to Dallas, but that would also be true in Bexar.

A I believe it is true in Bexar County as well.

MR. EASON: Thank you, sir.

CROSS EXAMINATION

Questions by Mr. Idar:

Q Mr. Weiser, most of your testimony has related to the Black population in Dallas County and some of the adverse affects upon that population under the present electoral scheme followed by the State of Texas in the multi-member versus single-member issue.

A Yes.

Q I wonder whether you have any information relating to the Mexican-American population in Dallas?

A I do from the 1960 census only, and some follow-up which we-- when I was involved with specific registration drives in the Mexican-American community in Dallas.

Q Would it be a fair statement to state that there were two-- shall I call them pockets-- of Mexican-American concentration in Dallas. One of them being known as Little Mexico and the other one being known as West Dallas?

A I believe that was true in 1960. I don't know that that is the case now.

Q Has the demography of those two areas changed to that extent in the intervening time?

A I know that-- to answer that in terms-- there was a Mexican-American candidate for the School Board and there were areas other than these two where special appeals with Spanish material were sent. Therefore, I would say that the areas of a large sum-- in fact, there are other areas that I believe now would be considered over fifty per cent Mexican-American-- other than these two areas that you mentioned.

Q I don't want to go into the specific points of your testimony as you have related to the adverse affects on the Black population. I would simply ask you whether the same effect would generally apply to the Mexican-American population in Dallas?

A For the Mexican-American population in Dallas, I believe, in 1960 there were 28,000 counted by Spanish surname. And, it is usual to include others, add an additional several per cent, in that the census is not very complete. So, that I really don't have a feeling or knowledge of, one, of how many Mexican-Americans there are now in Dallas County. And, two, what the political affect of this number would be.

JUDGE WOOD: What is the percentage of the population, Mexican-American, in Dallas?

A Well, it is whatever-- I really don't know.

Cross Examination - Weiser

But, it is the fourth count summary tapes you are-- At least, I haven't seen--

JUDGE WOOD: You said there were 28,000?

A In 1960.

JUDGE WOOD: All right.

A Close to a million--

JUDGE WOOD: You don't know what the per cent of Mexican-American is compared to the total population of Dallas County at this time?

A No, sir, I don't.

JUDGE WOOD: All right.

BY MR. IDAR:

Q I don't know that you got the full import of my question. My question was: Whether the same adverse affects of the electoral system and the multi-member versus the single-member issue in Dallas, as they affect the Negro adversely, would also affect the Mexican-American population-- whatever be its number?

A I really have no--

MR. IDAR: All right. Thank you.

JUDGE JUSTICE: Is there any cross examination of this witness?

MR. LUNA: Yes, sir.

Cross Examination - Weisser

JUDGE JUSTICE: Would you identify yourself for the record, please?

MR. LUNA: My name is Earl Luna and I represent Roy Orr, the Chairman of the State Democratic Executive Committee, one of the defendants in the Tylar case.

CROSS EXAMINATION

Questions by Mr. Luna:

Q Mr. Weisser, with respect to the Black population in Dallas County, in addition to the pockets of population that you have talked about, isn't there an additional Black population in other areas of Dallas County where it in some instances is mixed with the White, a minority of it being Black, and other areas where blocks at a time is Black?

A As I pointed out on the map, there are other areas, but very small areas because they constitute only ten per cent. There is an area in Irving, there is one precinct in Irving, that is predominantly Black, althought it doesn't show on the census tract because there are only nine hundred Negroes there.

Q And, for instance, in Carrolton, there are areas that are identifiable Black areas, are there not?

A Yes, sir, of about, oh, several hundred, I guess.

Q And, in Rollette--

A Well, Rollette is two hundred people or five hundred people.

Q Is that what you feel it is?

A Maybe a thousand. I mean, it is a very small community in Rollette, so I am really not aware how many Negroes there are in Rollette.

Q And, Garland?

A In Garland, I think, we are talking about three per cent of Garland or four per cent of Garland is Negro.

Q Well, we are talking about sufficient Black families in Garland to have about two thousand students in school, are we not?

A Four per cent. I guess your population was-- Garland has enough population for just enough for a legislative district, so it would be about 80,000-- four per cent would be 3,200. Conceivably, yes.

Q But, in that area they don't all live in a concentrated area; they are scattered out, are they not?

A I really don't know, sir.

Q I see. So, then as far as your expertise

and analysation of the voting patterns and habits is concerned, then, it is mainly limited to the City of Dallas, is that correct?

A Well, I have also analysed the precinct in Grand Prairie. And, apart from that, there are some areas in Wilmer Hutchins, and those are the block areas, and that is where the analysis that has been presented goes. Yes, sir.

Q Mr. Weiser, perhaps I did not understand you correctly. I understood you to tell us a little bit ago that Mr. Joseph Lockridge was on a DCMS slate, and but for being on the DCMS slate would not have been elected, is that correct?

A That is correct.

Q Do you have such a slate— any item of evidence to indicate to these Courts that the DCMS at the time Joseph Lockridge was a candidate endorsed Joseph Lockridge or any other candidate for public office?

A No, I do not have a slate card of that.

Q Do you have anything— any documentary evidence?

A No, I do not have it to present at this time.

Q Well, would it be fair to say, then, in making that statement you are drawing on your memory?

A Yes, sir, that is my political memory.

Q If it has been otherwise testified here as a fact, under oath, by Mr. George Bock, who is chairman, testified as Chairman of the DCRG, that until the 1970 elections the DCRG never endorsed candidates for the legislature, would you say that perhaps that refreshed your memory?

A No, sir. I would say that the members of the DCRG, which at one time were primarily concerned with precinct chairman races, also slated candidates for other races along with their precinct chairman and that these same-- the same group of DCRG candidates put out slate cards, and on that slate card along with their precinct chairman candidate was included Joseph Lockridge.

Q So then, when you talk about the DCRG, you are not talking about the organization. You are talking about a group of people that made a slate card that you feel also belonged to the DCRG?

A Well, on the slate cards in various precincts the DCRG label was put, in particular my own precinct, with the candidate running against me for Precinct Chairman.

Q I know that you are very competent in saving that political information. Have you saved one of those with the DCRG name on it?

A I don't know.

Q So then, would you say that the DCRG is an organization, so far as you know, did not, in fact, endorse candidates for public office prior to 1978?

A No, sir, I would again say that here we have an organization of the DCRG that has never had any public election of its nominees that I am aware of. It has never had a public election of its Precinct Chairman nominees, but that has acted in various ways formally and informally in terms of, say, billing, in terms of running joint campaigns, in terms of slating activity, and that they were -- this was in evidence in the Lockridge race, as well as in the 1978 races.

Q Aren't there many organizations who endorse candidates in the primary, in addition to the DCRG?

A Yes, sir.

Q For instance, you would not say that the endorsement of the AFL-CIO was unimportant in a political race, would you?

A No, sir, I would not.

Q You would not say that the Progressive Voters League was unimportant?

A No, sir, I would not.

Q You would not say that the endorsement of the Dallas United Labor Committee -- Citizens for Fair Taxes was an unimportant endorsement, would you?

A That one, I am not familiar with.

Q You are not familiar with it. You are not familiar that that one, along with the other ones that I named, also endorsed Representative San Holmes and another list of candidates, starting off with Senator Ralph Yarborough?

A There's a difference, and the difference is---.

Q Excuse me. Are you familiar with that?

A Yes, sir, there's a difference in the

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Barlaind Brashear race. The same organizations that you just mentioned endorsed Barlaind Brashear with the exception of the DCHS, and in that particular race in the first primary Barlaind Brashear received 12 percent of the white vote and 71 percent of the black vote, and you can compare that with Joseph Lockridge receiving 47 percent of the white vote in a contested -- a three-man race.

Q I understood you to say that it makes no difference in elections in Dallas County whether a candidate has the support of the black community. Did I misunderstand you?

A In terms of the legislative race of the Democratic Primary.

Q I see. In the General Election isn't it a virtual necessity that a candidate have the support of the black community in order to win a general election in Dallas County?

A Not a candidate for the Legislature, because he goes in on the ticket.

Q Don't they all seek it?

(REPORTER'S NOTE: There was no audible response from the witness.)

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Q Don't all candidates for the Legislature seek the endorsement of the black community in their vote?

MR. RICHARDS: Excuse me. Which election? Primary or general election?

MR. LUNA: No, we are talking about in the general election.

A Yes, in the general election they do, usually in the general election.

Q If we took the candidates for the Legislature in the general election, I'm sure that you have analyzed these votes, and didn't you find that the Democratic candidates who were elected in 1970 in the general election, if you took away the black vote from them, every one of them would have been defeated, wouldn't they?

A Yes, sir.

Q So then, it is a necessity in the General Election that black candidates have -- that all candidates who expect to win in the General Election have support from the black community?

A There is a distinction here.

Q Is that true?

A There is a distinction here. They want to come in on the slate, but it isn't necessary that an

individual legislative candidate, being only one of 15 or possibly one of 18, make an appeal at all to the black community.

Q I am going to hand you what has been marked for identification purposes as Defendants' Exhibit No. 53, composed of three slate cards together with another political pamphlet headed "Vote for George Bush" with other information on it, and ask you, first of all, if you are not familiar with all these organizations listed on the slate cards that I asked you about earlier as supporting candidates, and number two, if these documents don't indicate that all of the candidates listed there were actively seeking support of the black community.

A Let's see. I just looked at the first one.

This was May 2nd, and it starts with Senator Yarborough, Mike McKool, Ben Barnes, Bob Armstrong, Oscar H. Mauzy, and then it has a number of State Representatives and a Probate Judge and a Precinct Chairman.

The second one doesn't -- "Elect these friends of Lyndon B. Johnson -- Governor Yarborough, Lt. Governor Barnes --" several Supreme Court, and there are some legislative places on here I don't believe I have ever seen that one.

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Let's see. The third one is a card apparently to Precinct 308, and it is an appeal in a general election to pull the straight party lever, and the names on it are to elect Dan Holmes, Oscar Mauzy.

And then the last one is a piece of campaign material, "Vote George Bush. Vote for the man of the party."

Some of this I have seen, I believe, the first card before, but none of the others.

Q All right, sir. Mr. Weiser, I understood you to say on direct examination that multimember districts were more costly to be elected in than less than or single member districts.

A Yes, sir.

Q By that you are saying that a person running county-wide in Dallas County for office would be expected to spend more money than somebody running for an office that was less than county-wide.

Is that what you are saying?

A To be successful.

Q To be successful?

A To be successful, yes, sir.

Q So then, you feel it would favor the affluent or rich candidates. Is that your testimony?

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A It would favor them in that respect, yes, sir.

Q If we took a hypothetical situation where we had a county-wide race with, say, ten people in that race or more -- 10 people.

A You mean like in a special election?

Q Well, like in a special election.

A All right.

Q Then we would expect the person to spend more money than somebody might spend in another election of less than county-wide.

Is that what you are saying?

A Now, that may not be true in a congressional race. You shift from a legislative race to a congressional race, say, or a senatorial district race, then it isn't necessarily true. In fact, it usually isn't true that a candidate for the Legislature spends more than a candidate for the Senate or for Congress at all, but on a legislative district I believe that is true.

Q On the special election in 1968 you have already told us that Representative Dan Holmes was elected there, right?

A Yes, sir.

Q But I believe you hadn't found the records --

if I may show you Defendants' Exhibit No. 3---.

(REPORTER'S NOTE: Counsel hands exhibit to witness.)

Q Having reviewed Defendants' Exhibit No. 3, when you have an opportunity to look at it, would it be correct to say that in that 1968 special election wherein Ian Holmes was elected, there were 18 candidates who offered themselves for election, and that Ian Holmes, the black candidate, received more votes than the other 17 all put together in the county-wide race? Would that be correct?

A I haven't counted the 18, but, yes, sir, that's correct.

Q Would you take a quick look at it and see if that is correct?

(REPORTER'S NOTE: The witness complies.)

A Yes, sir, there are 18.

Q Next I hand you -- I believe it was Defendants' Exhibit No. 8 and ask you to look at that and see whether or not it appears to be the expense accounts

of all candidates in that special election and that the total expenditure of Ian Holmes to beat those 17 white candidates in one race totaled $1,038.91.

MR. RICHARDS: Excuse me, Court please, this will come up with respect to the Defendants' exhibits on election costs. We take it those reflect only the expenditures of the candidates themselves and not necessarily expenditures of other organizations on their behalf.

To the extent of that modification, we understand---.

JUDGE GOLDBERG: The exhibit will speak for itself.

MR. RICHARDS: Well, actually, the exhibit we have been tendered does not. It just says "Record of expenses," and we take it, it is only the record on file with the County Clerk by the candidate. Is that correct?

MR. LUNA: Well, the Court, I'm sure, will take judicial knowledge of the statute in Texas that requires candidates to report all funds that were spent by them or by

anybody in their behalf.

JUDGE GOLDBERG: Does it bear a file mark of any kind?

MR. LUNA: It bears the file mark of the County Clerk. It is the affidavit of the candidate himself as to his expenses, Your Honor.

JUDGE GOLDBERG: Thank you. Proceed.

THE WITNESS: Was there a question?

Q The question, Mr. Weiser, was to ask you to take a quick look at the affidavits of Mr. Ian Holmes and tell us whether or not they reflect that Ian Holmes in that special election spent $1,038.91 in defeating 17 candidates in a county-wide election.

A I don't see the totals listed here.

Q Well, they are not totaled up, but would you look over on the last page at the totals in the two and see if that is not correct?

A I still can't find it.

(REPORTER'S NOTE: Counsel approaches the witness.)

(PAUSE)

JUDGE GOLDBERG: Can't it be stipulated

that this document was filed and shows these figures?

MR. RICHARDS: Surely. We are not quarreling with the figures on file.

JUDGE GOLDBERG: It speaks for itself, surely, and we have got to move along with this case.

MR. RICHARDS: Surely. I am not quarreling with that.

JUDGE GOLDBERG: We cannot have this kind of bickering going on.

Q Mr. Weiser, would it be correct to say that you could not call an area an identifiable Republican area or classify people as Republicans simply because they may have voted for a Republican candidate in November elections?

A One time? You mean---?

Q Or more.

A It is fairly standard in my opinion to do an analysis to pick out Democratic and Republican areas. In fact, I know maps were available for redistricting purposes by the State of Texas. And the analysis is fairly standard by all people doing that analysis.

Q You know Mr. Curtis Graves, one of the

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Plaintiffs in this case?

A Yes, sir.

Q Isn't it a fact that he headed up state-wide last general election a group supporting Republicans for election in the general election?

A He was -- I am aware of a group of that type, yes, sir.

Q And isn't it a fact that he was elected to the Legislature as a Democrat?

A Yes, sir.

Q And do you also know that he has announced that he intends to announce as a candidate for Congress in the Democratic Primary this year?

A I assume I follow that, yes, sir.

Q In a county such as Dallas, Mr. Weiser, don't we have a lot of areas where we have a community of interests of all people in the entire county in areas such as the Dallas County Junior College, University of Texas at Dallas, the Trinity River Project, Parkland Hospital District, and many other areas?

A Yes, sir.

Q And isn't the interest of a person in South Dallas, North Dallas or Dallas County, east or west, just as important and just as tied to that hospital district

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as one in any other area?

A How, of course, you are choosing the hospital district---.

Q Let's talk about the hospital district first. Would that be true?

A No, sir, in the hospital district there are people from Irving who sort of would rather have a separate hospital district, rather than that, but there are other areas.

Q Now, isn't it a fact that if we had single member districts, only those members who were elected from the Legislature in areas, such as what we might call the poverty areas, who use Parkland Hospital most, would be the only ones who would be inclined to support it?

A No, sir, not at all. I mean we have an example of the State Senators.

Q All right.

A Who represent different areas in Dallas County. Yet, they combine to agree on Dallas County matters.

(No omission here.)

Q All right. So then back to my original principle, people in all parts of the County are interested in the Parkland Hospital District, are they not?

A Well, in that particular case, in the Parkland case, I just happen to know that in Irving, there are some people who had rather have their own hospital district.

Q Well, some people, but you don't think that a single member, Legislative District Member, would not be for the hospital, sir, if he was elected from Irving do you?

A Would you repeat that?

Q If we had single-member districts and one being composed by part of Irving, that being a City of over 100,000, would you expect him to support the hospital district or not to support it?

A I really have no judgement, unless I know what the alternatives would be in this case.

Q All right. So generally, whether they would support it or not, we need a county-wide and everybody should support it in your expert opinion? Is that right, Mr. Weiser?

A The Parkland Hospital, I favor the Parkland Hospital. I think it should be supported.

Q You also favored the election of Reverend Zan Holmes, didn't you?

A Yes, sir. I seconded the nomination when the Executive Committee unanimously nominated him to fulfill the expired term.

Q And I offered the resolution?

A Yes, sir.

Q And so then would it be fair to say that when we have a candidate who is qualified and who works hard, that people in Dallas County will support him regardless of his race, creed, color, religion or national origin?

A No, sir, not in the Democratic primary in the Legislative races.

Q Well, the Dallas County Executive Committee nominated him, didn't they?

A If you recall, first he was nominated by the D.C.R.C group and then the other group seconded the nomination. And it is my opinion that it would never have worked the other way around.

Q Do you know Mr. Dick Reed, one of the Plaintiffs' in this case?

A Yes, sir.

Q Now, Mr. Dick Reed has been elected for

the Legislature twice? Is that right?

A Yes, sir, he has.

Q I assume, then, from what you said, that a person must have the support of the D.C.R.G. to be elected to the Legislature and that Mr. Dick Reed had that support. Would that be right?

A No, sir, unless there are very, very unusual circumstances.

Q So then Mr. Dick Reed has been twice elected County-wide and did not have that support, is that right?

A That's correct.

Q Do you know Mr. Jim Stroud?

A Yes, sir.

Q Incidentally, Dick Reed is white, isn't he?

A Dick Reed is white.

Q Mr. Jim Stroud was elected originally to the Legislature and County-wide, after first having been nominated by the Democratic Executive Committee and did not have the D.C.R.G. support, did he?

A He didn't need the D.C.R.G. support, because the primary was over. He only needed the nomination. Once past the nomination, then the Democrats win or

lose together.

Q The Democrats win or lose together in Dallas County.

A For the most part, in the Legislative races.

Q In 1962, did you live in Dallas County?

A Yes, sir, I did, and they all lost.

Q Every one of them lost?

A All but the contested Legislative races were lost by the Democratic party.

Q And eight Republicans were elected that year, were they not? Six or eight?

A I don't believe eight.

Q Six?

A Let's see. I think we had a nine-member delegation. I believe six, yes, sir.

Q And this year, this past election, 1970, we had a republican who was elected to the Legislature County-wide, did we not?

A Yes, sir.

Q Who was that?

A Fred Agnich.

Q Do you know Judge -- former Judge John Bryant who was elected as County Court at Law Judge on

the Republican ticket?

A Yes, sir.

Q County Court at Law Judges are elected County-wide in Dallas County?

A Yes, sir.

Q Do you know Judge Grover Hart, former Republican Judge of the County Court at Law?

A No, sir, I don't.

MR. RICHARDS: We stipulated in our pre-trial order that they were elected County-wide, I believe.

MR. LUNA: Yes, we did.

Q Now, when you mentioned earlier about the problems that Republicans had in the Republican areas, isn't it a fact that in Dallas County if a Republican has a program that appeals to the majority of the voters, that Republican is generally elected?

A Are you speaking about legislative races?

Q In any race.

A Well, no, sir. I don't find that the case. I think it depends upon the district. Are you speaking about County-wide?

Q Well, let's say County-wide.

A Well, County-wide, for the most part, in

the Legislative races, in November, it is a matter of straight party voting with the difference between maybe 5 percent on the average.

Q What about other races?

A Well, for instance, which --

Q -- for instance, wasn't there a Republican in Dallas County named Mr. Bruce Alger, that was elected in 1954 and served through 1964, continuously as a Republican?

A Yes, sir, there was.

Q So his program at that time appealed and he was elected, wasn't he?

A Yes, sir. I assume so.

Q Joseph Lockridge, when originally elected was running against Gene Ball and Ben Lewis, whom you have named?

A Yes, sir.

Q One of whom, namely, Ben Lewis, was a member of the Legislature, was he not?

A Yes. At that time in the primary he was a member.

Q Was an encumbent?

A Yes. That's correct.

Q So Joe Lockridge, the Black --

A Yes, sir.

Q - beat an encumbent plus another candidate, Gene Ball, in a County-wide election without a run-off, did he not?

A Yes, sir. Very impressive. It showed the power of the D.C.R.G. at that time.

Q I believe you have told us in your figures that the Black population of Dallas County registers to vote at a slightly higher percentage than the white population? Is that right?

A Yes, sir.

Q And then they vote at about the same ratio, do they not?

A Probably a little less, depending upon the elections.

Q Are you aware that the Democratic Committee in Dallas County has this year been urging that at least three Blacks run for the Texas House with the additional seats available?

A Is this the Democratic People for Responsible Government that has been urging this?

Q I am talking about the Democratic Party.

A Is this through the Democratic Executive

Committee Voting Resolution --

Q -- apparently you are not aware of it, Mr. Weisner?

A No, sir.

Q All right. If, in fact, the figures show that County-wide Legislative candidates are elected for less money than a less than County-wide State Senatorial District, would you think that is significant insofar as what you have said about it costing more, County-wide?

A No. That is why I made the distinction between the Senatorial District, Congressional District and Legislative Districts. I mean, in a Congressional District, where people are able to focus in on an important -- very important office, the campaign costs are several hundred thousand dollars, quite often, for each candidate.

Q What is your political affiliation?

A I am a Democrat.

Q And do you label yourself one way or the other?

A I label myself as a Democrat.

Q Well, do you at some times label yourself as either a liberal or conservative Democrat?

A I have been labeled as a liberal Democrat, yes, sir.

Q In your opinion, Mr. Weisner, would more liberal Democrats be elected in a County-wide system, or for the Legislature, I am talking about, or in single member districts?

A There again, in terms of what I have looked at here, it doesn't seem to make a difference whether they are liberal or conservatives on getting the slate of the D.C.R.G. In other words, the D.C.R.G. has slated some liberals and it has -- as a rule, I guess, it slates conservatives, but it has slated some liberals. For instance, in the last election, it slated Jim Stroud, Zan Holmes and some of the others usually labled by themselves as moderate to liberal.

Q So then would you feel it would not make any difference?

A So I would think that the importance of the D.C.R.G. slating, if suddenly they started slating these that were called liberals, that this would change the delegation immediately.

JUDGE GOLDBERG: Are you suggesting that it is more important to have the D.C.R.G. endorsement than it is to have single member districts? Is that the conclusion you want to draw?

A In terms of the -- in terms of getting elected now in Dallas County?

JUDGE GOLDBERG: Yes, I believe that is what Mr. Luna is asking you.

A Yes, sir. I believe that more candidates will be elected with the D.C.R.C. slate than if single member districts, because the Republicans --

JUDGE WOOD: -- well, Mr. Weisner, isn't it a fact, though, that the encumbency of a candidate, the fact that he runs with a ticket, the fact that he is very attractive on television, he comes through well, he is qualified, he is highly attractive on the media, television, radio, newspapers, has a great personality, highly qualified and appealing, aren't these factors that seem to override, in Dallas County, the color of his skin?

A No, sir. Not for the Legislative race.

JUDGE WOOD: I am saying "support". Broadbase support or organized slated ticket support is certainly not new to Dallas County. It happens in Bexar and it happens in Harris.

A Yes, sir.

JUDGE WOOD: And of course, the fact that a man is an encumbent and he is supported by a well-organized group like in Bexar County the Good Government League, which is somewhat a counterpart, and they have a legislative group there, aren't all of these factors -- and financing. Financing is a fact of life in politics?

A Yes, sir.

JUDGE WOOD: You may have the most attractive candidiate in the world and if he is not financed, he can't win any place, can he? You might not can win with it, but without that, you can't win without some adequate financing?

A Yes, sir.

JUDGE WOOD: Don't you think those factors are important and override perhaps the color of a person's skin?

A They haven't in the past, sir.

JUDGE WOOD: Well, Bruce Alger was there for a long time.

A I am sorry. I was speaking from the Legislative races.

JUDGE WOOD: Well, these are County-wide races, are they not, and they are at large, Congressional races?

A Yes, sir. And on a Congressional race, when you are focusing in on one, I think it is quite different than when you are running as one of 15, and I truly don't believe that the people really --

JUDGE WOOD: Well, the part that worries me and I think it may worry Judge Goldberg, is the slate more important than the case before this Court? The fact they have this endorsement is more important than whether we have multi or single member districts?

A Well, of course, in a single member district case, the D.C.R.G. would not have that strength.

JUDGE GOLDBERG: Say that again, please sir.

A In a single member -- if we had single member districts, then the D.C.R.G. slate would make little to no difference.

JUDGE GOLDBERG: You mean even though they slated people in each of the districts?

A That's correct.

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JUDGE GOLDBERG: That is your conclusion?

A Yes, sir.

JUDGE GOLDBERG: And their effectiveness is only because they are County-wide?

A Yes, sir.

CONTINUED RECROSS EXAMINATION

QUESTIONS BY MR. LUNA:

Q Now, I asked you that question earlier, Mr. Weiser, and I understood you to give me a different answer. Perhaps I obviously misunderstood you. My question was, earlier, would, if we had single member districts, would more liberal Democrats be inclined to win and be elected than are inclined to win under the County-wide district?

A At the present situation, there may be two liberals in office. I would think under single member districts, that number would increase.

Q Would increase?

A Yes, sir.

Q So then your interest in asking that single member districts be granted instead of multi member districts, as distinguished from color of the skin is so that more liberal Democrats can win than can presently win? Isn't that correct?

A No, sir. As I pointed out, the D.C.R.G. has slated and endorsed liberal candidates and has opposed conservative candidates.

Q But you feel that more liberals would win under a single member district than under the County-wide district, don't you?

A I feel the whole political process would open up and that slates wouldn't make any difference any more.

Q Well, do you feel that more liberals as you said a while ago, would be elected under the single member districts?

A One result would be that more liberals would be elected.

Q And you would like to see that, wouldn't you, Mr. Weiser?

A Yes, sir, I would.

MR. LIMA: Thank you.

JUDGE GOLDBERG: I want to ask once

once again, is it your testimony that on the single member districts, more Blacks would be elected than under the multi-system, forgetting the label, "liberal and conservative"?

A Yes, sir.

Q Mr. Weiser, if we -- if the Court permitted you to draw a map to attempt to elect Blacks and you were to gerrymander it so you put all of the Blacks in that you could get to elect the largest number of Blacks that could possibly be elected, how many, in your opinion, could be elected in Dallas County, based on race, and single member districts?

A That would assume that the -- that would assume that the Black community automatically votes for a Black candidate?

Q Yes.

JUDGE GOLDBERG: Well, make it the assumption you have made for us all morning, based on all of these charts you have prepared, and the block voting and so forth, and then respond to the question.

A I would expect under normal cutting of the districts that three would be -- that three Blacks

would be elected.

Q Three Blacks would be elected under single member districts, if cut up in that manner?

A No, sir. Under almost any cutting up.

Q Now, aren't you also aware that at least on the Democratic ticket, -- well, first, we get three additional members of the Legislature this year above what we had last year, from 15 members to 18 members, is that right?

A Yes, sir.

Q And aren't you aware that long before this lawsuit was ever filed, that the Democratic County Chairman in Dallas County, had come out publicly advocating the election of three Blacks in Dallas County?

A I was not aware of that, sir.

Q You were not aware of that?

A No, sir.

Q All right. Secondly, if three Blacks are elected from Dallas County at large, and if those same Blacks in Dallas County have the privilege of voting for 15 other members of the Legislature so that we have three Blacks, plus a voting interest in all of the 15 others, don't they have more effective representation

than they would have if they had only three Blacks and didn't vote for anybody else?

A No, sir. Because they depend either upon your sayso in their getting the nomination or a group such as the D.C.R.G. And it is absolutely essential to get that endorsement before they are able to win the election -- the nomination.

Q Wasn't Zan Holmes chosen by the Black community before he was endorsed by anybody else?

A Well, sir, he was endorsed by the D.C.R.G. That part, I do know about.

Q I know, and I made the motion and you seconded it, but before all of that happened, didn't the Black community recommend that he be the one that we endorsed?

A Well, there was no primary election to get him elected.

Q Thank you very much. Could you answer the question?

A There was a meeting of Black leaders who endorsed Zan Holmes, which led to his -- I assume, to his naming by the D.C.R.G. Committee.

Q And you know that in order to be effective, the Democratic party would have to follow that

same process to get people in the Black community -- that the Black community select in order to put them on the ticket, or they wouldn't help the ticket, would they?

A I would disagree with that in the case of Joseph Lockridge, because there the Black community was not doing any picking.

Q Back to your endorsement by the D.C.R.G., do you know Joe Rich?

A Yes, sir.

Q He is former chairman of the D.C.R.G.?

A Yes, sir.

Q And in the 1970 election, did he and a number of his friends, endorse the Republican who won; Fred Adkins?

A I am really not aware of what he did in that campaign.

Q Thank you, sir.

JUDGE JUSTICE: Is there redirect examination?

MR. RICHARDS: Very brief.

REDIRECT EXAMINATION

QUESTIONS BY MR. RICHARDS:

Q Mr. Weiser, briefly, why do you say that the D.C.R.G. slate would dwindle in significance in the event one had single member districts?

A Obviously the people in the area then would direct their own affairs -- the people would pay attention to who they were going to elect and those with different interests would obviously elect different candidates and here is where I feel that any type of -- almost any type of cutting up the County into single member districts will result in approximately -- oh, say half Republicans and half Democrats, and the half Democrats, three will be those chosen by predominantly Black areas, be they white or Black.

Q I think that answers my question. The other side of the coin, I take it now, is that with the ballot the size it is in Dallas County and 15 Legislative races and very few contests, the bulk of the citizens are not even familiar with the Legislative candidates in the primary? Is that correct?

A That's correct.

MR. RICHARDS: May I approach, Your Honor? I have one exhibit.

Q Mr. Weiser, I have marked as our exhibit 92, a slate card that was put out -- well, a slate card,

and I will ask you if glancing at that, whether you recognize that slate card?

A Yes, sir.

Q Do you recall when that was put out in Dallas County?

A Well, since it has "Lockridge" on here, for place 5, and Chrisemen, -- let's see. This would be for the May 7, 1966 primary.

Q All right. Joe Rich for County Chairman? Is that correct?

A Yes. That's correct.

Q Is that the slate card to which you referred to in your testimony when you talked about the D.C.R.G. slating of Joe Lockridge as legislative candidate?

A Yes, sir.

Q You were County Democratic Secretary at that time in 1966? Is that correct?

A Yes, sir.

Q I was Precinct Chairman at that time, if you recall?

A Yes, sir.

Q Did all of us have, as you recall, similar slate cards put out all across Dallas, urging the support of Joe Rich and that slate of legislative candidate

in all of the white precincts from Dallas that you know of?

A Yes, sir. This was widespread.

MR. RICHARDS: We would offer, then, Plaintiff's Exhibit 92 into evidence.

JUDGE JUSTICE: Is there further cross examination by you, Mr. Luna?

MR. LUNA: If you please, Your Honor.

REGROSS EXAMINATION

QUESTIONS BY MR. LUNA:

Q What you call the D.C.R.G. slate, the Plaintiffs' Exhibit 92, it says it is the John Connally team, instead of the D.C.R.G., doesn't it?

A Yes, sir. Other groups use this same type of tactic to go with the winner.

Q Well, is there anything on this slate that indicates that this card was put out by the D.C.R.G.?

A It is inconceivable to me that that would have been counterfeited. It so looks like the card I was describing and put out in all of the precincts, including my own.

Q But the only reason you thought it was

put out by the D.C.R.G. is --

A -- no, sir. The letter that went along with it.

Q Because --

A -- in my particular precinct.

Q But there was nothing about D.C.R.G. only the John Connally team? Right?

A Well, on the card.

Q Yes. Are you familiar with the Home Rule Cities?

A No, sir.

Q The Legislative Delegation to the Home Rule Cities?

A No, sir.

Q You are not familiar with it?

A No, sir.

Q I think I have one more question. Isn't it true that in the Democratic primary that the -- some Black candidates support one -- I mean some Black citizens support one ticket and other Black citizens support another one?

A Yes, sir. For a number of the Legislative -- in fact, this is presented here.

Q So then since the Black citizens don't

agree among themselves, as to what candidate should be supported for the Legislature, if we had a single member district then, those Black citizens who didn't agree with the one who is elected, wouldn't have their point of view represented, would they?

A That's correct.

Q And this happens all over the Black community in Dallas County, does it not, Mr. Weiser; that the Black community supports different candidates -- part of the Black community support one candidate in the Democratic primary and another part of it supports a different one, while other segments in very small numbers will support the Republican?

A In Legislative campaigns, in contested races in 1970, the lowest percentage of votes of any candidate was 68.7 percent and it ran to 91 percent for a particular candidate. They were remarkably overwhelming in nature for a particular candidate and this pattern is repeated throughout. There is a particular pattern when candidates make an appeal to the Black community that is answered by the vote.

Q All right. Now, in that one that had 68 percent, for instance, 68 percent of these citizens in that precinct voted in the Democratic primary for one

candidate?

A Yes, s ir.

Q And the other 32 percent who voted, voted for a different one?

A No, sir. For three others.

Q For three different ones?

A Yes, s ir.

Q So then, in that particular situation, whether it is 32 percent of them or 10 percent or 20, if it was a single member district, those who voted for the losing candidate in the Black community would then not be represented by a citizen or a representative of their political choice, even though his skin might be black?

A That's correct.

Q Thank you, sir.

JUDGE GOLDBERG: Anything further?

MR. CURRY: No, sir.

MR. RICHARDS: No, sir.

JUDGE GOLDBERG: I would like to ask one question, Mr. Weiser: assuming that there is a wide spectrum of community of interest in the Black community in a single member -- projected single member district, would you

also say that there is also some element and some degree of community interest in the Black community that spreads out into the entire Dallas County situation?

A Yes, sir, there is.

JUDGE GOLDBERG: Would that be a fair situation?

A Yes, sir.

JUDGE GOLDBERG: I don't want to be unfair; I want to see if that is a reasonable conclusion from what you have testified?

A Yes, sir.

JUDGE GOLDBERG: Any other questions?

JUDGE JUSTICE: The Court will be in recess for 10 minutes.

(Whereupon Court recessed at 11:03 P.M. to reconvene in 10 minutes).

JUDGE JUSTICE: Please call your next witness.

MR. COLLINS: We would like to call Mr. McClesky. My name is John Collins, Your Honor, and Mr. Richards has gone to check on some of our other witnesses at this time. We will now call Dr. McClesky.

CLIFTON McCLESKY,

called as a witness on behalf of the Plaintiff, after having been duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

Questions by Mr. Collins:

Q Would you state your full name, please?

A Clifton McClesky.

Q And, where do you live, sir?

A In Austin.

Q And, what is your business or occupation?

A I am employed as a teacher at the University of Texas at Austin.

Q And, what department do you teach in, please, sir?

A The Department of Government.

Q Dr. McClesky, I would ask you briefly to

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just describe your educational training and background for the Court, please?

A I grew up in Texas. I attended the University of Texas, graduated with a Bachelor's Degree from here, took my Doctorate from Harvard University, taught here for three years, taught six years at the University of Houston and returned here five years ago, and I have been continuously employed here since that time.

Q And, within your area of specialty have you had occasion to publish any books or articles of any kind?

A I have written fairly extensively on American politics, particularly politics here in Texas, co-authored a couple of books written on that subject. I have written one which is widely used as a college textbook. I have written several articles as well, touching in one way or another on Texas politics.

Q And, what is the name of this text, please, sir?

A The Government and Politics of Texas.

Q All right, sir. And, I believe you have co-authored another work primarily dealing with politics in Texas, have you not, sir?

A Yes. This is a book called Party and Factional Divisions in Texas with Professor Zurcher and Holliday.

Q All right, sir. Dr. McClesky, at the request of the plaintiffs in this lawsuit have you had an occasion to make a comparative study with respect to any minority groups and their access to the political processes in the states of Texas and Indiana?

A Yes, sir. It seems to me that the differences there are of four sorts. The State of Indiana simply does not have the legacy of segregation, slavery, racism and so on that this state has. Another difference is social in nature. Minority groups in the State of Indiana, generally speaking, and particularly Black minorities, have higher socioeconomic status and are thus better able to organize themselves to mobilize themselves to defend their interest and to seek effective representation. A third factor for it seems to me is the difference in the rules of the game. In the State of Indiana there is no double primary, there is nd majority requirement and there is no place system in legislative contest; that does make a difference.

JUDGE JUSTICE: There is no what?

A No place system. The top five or ten or

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whatever men in a given district will win regardless of whether there is any-- Well, there is no place designation. The fourth factor, it seems to me, is the political context. Indiana is a competitive state with pervasive and continuous party competition at almost every level.

Q All right, Doctor.

A And, it is not true in Texas, obviously.

Q All right, sir. With respect to Texas, can you tell the Court whether or not there are any theoretical or historical reasons that tend to minimize Black voters opportunities to participate in the political process?

A I can see some reasons of both sorts. If you will look at it from a standpoint of representational theory, it seems to me you can talk in terms of basically two alternative ways in which a group may seek to hold its representatives accountable or seek to obtain representation. One is to be able to elect members from that group to the representative assembly. Now, this is almost impossible in Dallas County or in any large multi-member district of that sort where the minority is not large enough to have some kind of commanding presence. If it was thirty-five or forth per cent

then I think it might be a different situation, but in the case of Dallas County the Black minority there simply does not have enough votes to be able to insure the election of Black representatives to the legislature who have been chosen from within that group by that group; and that is an important condition. It is not only important that the person be from the group for that theory of accountability, but it is important that the person be chosen by that group. Now, the alternative model of representation accountability would be one from which the group might, while it might not be able to select one from within its ranks, nevertheless would have sufficient power and influence over the election of, so to speak, outsiders; that they would nevertheless be quite attentive to, quite concerned with, quite responsive to that group. But, in a large multi-member district that is almost impossible to obtain, because there are so many interests that have to be accommodated and because there are so many obstacles in the way of the minority. Obstacles in the terms of costs of campaigns, obstacles in the terms of the prejudice that still exists against the group, the rigidity of the existing alignments; all of these things make it very difficult for the group to get in and negotiate and play the kind of role and to

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exert the kind of control over the elected representative that that theory of accountability would seem to call for. Now, if you look at the historical reasons, in the case of Texas and Dallas County, in particular, you do have the legacy that I eluded to earlier of slavery, racism, of prejudice. These are declining, but they decline very slowly. And, I don't think anyone who is familiar with this state and with the Dallas community would argue that there is no longer racial prejudice there. And, this does get in the way of trying to achieve the kind of coalition, trying to build the kind of majority, that the democratic theory calls for. And, in addition to that you have the problem, and this is another historical dimension, you have the problem that the rules of the game-- the political game in this state-- were fixed and crystallized pretty much in the first half of the 20th century when Blacks were effectively and almost entirely excluded from the political process. They had very little influence-- I should say no influence-- over the option of the dual primary system, for example, the majority requirement, a place system, or if you drop down to another level, at large city council elections or at large school board elections. All of these things were pretty well fixed in Texas before Blacks became effectively

participants in terms of being able to register and vote.

Q Along that same line, Doctor, how long has it been that the Negro and other minority groups have actively participated in the Texas political process?

A I don't think it is at all an exaggeration to say, for all practical purposes, that it is almost entirely since World War II, and primarily since 1960. The decade of the 60's really brought the unfolding of participating on the part of Blacks; although some of the opening wedges were developed immediately after World War II.

Q With respect to your second model, I believe, of representation, you described the electorate as having an opportunity to more or less define the bounds of acceptable conduct. Would that be a fair summary of that second model of representation that you mentioned?

A Well, the point I was trying to make there is that in order for the group to have influence over the elected representative it is going to be important that they have some kind of veto power over his election or some opportunity of his dis-election if he proves unsatisfactory. And, this is simply so much harder to do in a large multi-member district because the minority is in a

submerged position; it doesn't have the visibility and it doesn't have the strength. And, what you end up with, I am afraid, is the creation of permanent minorities and permanent majorities. And, this is something that, well, Madison warned us about in the Federalist Papers-- about the danger of that situation. And, his situation was a fluid enough political process with shifting alignments so that there was always the prospect of putting together a winning coalition. And, in the Dallas context that is very very difficult.

Q Doctor, based on your experiences as a student of Texas politics, does the average voter have difficulty in remembering, say, the candidates in a large multi-member district?

A I don't think there is any question about that. Any person who votes in such a situation-- most people will illegally take a slate card of some sort to the polls with them. You find this happening in almost all of these areas because it is the only way the person can possibly make any sense out of that bad sheet balance. It is not just the average voter, I might add, who has trouble remembering all of these people.

JUDGE GOLDBERG: There isn't much difference in Indiana and Texas, is there?

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A The difference, I suppose, is that the system here in Texas, Dallas County, particularly, I think involved a larger district. We are talking about prospectively eighteen persons in this case, and I think there were only about eight involved, wasn't it, in the Indiana case; and the larger the number, obviously the harder it is for the voter to keep track of, but, I was thinking about the difficulty that not only average voters but political leaders, as well, sometimes have. I was present in the chamber of the Texas House of Representatives at a committee meeting two years ago, in 1969, when Representative Reed from Dallas introduced a bill, brought up the bill before a committee to require single-member districts in Dallas. The Chairman of the Democratic Executive Committee in Dallas County came down to testify in opposition to this, and made a very strong impassioned argument in terms of how these fifteen representatives-- at that time all Democrats-- were all one big happy family and they worked together, corporated, and they knew the problems of Dallas, they knew how to work with each other. And, all of this was very fine until Representative Graves, who was on the committee, asked Mr. Ridge if he could name those fifteen representatives-- this is the Chairman of the

Democratic Executive Committee of Dallas County-- my recollection is he got about five of them and had to give up. He himself could not remember all of these people. And, if he cannot remember, then surely it is asking too much for the average voter to remember.

Q You mentioned something a moment ago about illegal slate cards. What did you have reference to there, Doctor?

A These are cards that are put out by various candidate's organizations, which are basically cheat sheets, which the voter may go into the polls and mark his ballots and remembering his decisions that he may have wanted to follow but he may not be able to remember all of them. The law in Texas does prohibit the use of such materials, and yet there is widespread violation of this simply because the voters cannot get along without it.

BY MR. COLLINS:

Q You mentioned a moment ago the word "fluidity" and about shifting alignments.

Do you know whether or not reapportionment here in Texas has led to more responsive representation on behalf of blacks and other minority groups?

A I think that is most clearly seen, if you look at the past and don't attempt to judge what might happen in the future, but if you look at the past few years with respect to the Texas Senate, which is a single member district arrangement, which has been badly malapportioned, and the changed that have come about in the Senate have helped to open up a lot of the old limitations and to make it much easier for a wide variety of groups to get some kind of representation in the political process.

I think this is absolutely crucial. We have in this country probably as great a crisis in intergroup relations as we have had since the 1860's, and if we are going to expect our representative institutions to be able to cope with that crisis, to resolve the conflicts that are there, then we have got to get the parties to that conflict into the representational process.

Q Dr. McClesky, what in your judgment is

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necessary to insure full and effective participation of minorities in the Texas political process?

A Well, it seems to me that you have to think of this as a double-ended affair. You can think of full and effective participation, first of all, in terms of the opportunity to register and to vote, and this is, I think, quite properly the first priority that has been given, and so you can go back to the white primary cases, you can go back to voting rights cases and all of these are attempts to insure full participation in terms of access to the ballot box, but that is only one part of the process.

It is also important to get to that other end, that is to say, to deal with the representational system itself.

Now, the Supreme Court itself has recognized this, I think, in the Gomillion (phonetic) case, where the issue was not whether Negroes in Alabama could register and vote in that particular city, but rather whether or not the boundary lines would be drawn in such a way as to minimize the effectiveness of that participation, and the Court said, "That's unconstitutional," and I think what they were saying is basically what I am arguing, that you have to deal not only with access to the

ballot box, but with the institutions, the representational procedures which can be used and which, in fact, have had the effect of minimizing or excluding blacks from the political process.

Q There has been some discussion here this morning, Doctor, with respect to what happens to losers in the various political systems.

Can you describe for the Court in your judgment what happens to losers in, say, a multimember district, as opposed to a losing party or interest group in a single member district?

A I think there is a very important distinction there that is easy to lose track of. The loser in a multimember district loses everywhere, across the whole county, and this may lead, as I suggested, to the creation of permanent and hopeless minorities, people who have no chance of ever achieving some kind of a coalition on the winning side, but in a single member district those who lose there may, nevertheless, find that some of their interests are being represented by the winners in other districts.

For example, the black who lives in Garland, those blacks may not be able to elect one of their own there, but if there are blacks in other parts

of Dallas County who are able to do so, they can help to protect their own, that is, the Garland interests.

Similarly, the upper class citizen who happens to lose in a single member district may find it possible to get some representation through the winners in your other districts in the county, so it seems to me quite a different thing to talk about the losers in single member districts and to talk about the losers in a county-wide multimember district of this size.

MR. COLLINS: We pass the witness, Your Honor.

JUDGE JUSTICE: Are there other Plaintiffs' attorneys who desire to interrogate this witness?

MR. GEE: I may have one or two questions, if I may, Your Honor.

JUDGE WOOD: You have to state your name for the record.

MR. GEE: Yes, sir, I will. I am Tom Gee, representing Dr. George Willeford.

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BY MR. GEE:

Q Dr. McCleskey, has your study of political trends and activities extended in a general way to the United States, rather than merely to Texas?

A Yes. I claim to have some competency in American politics generally.

Q Would you be inclined to say that the situation which you find in Texas is more similar to, say, the situation which you would find in Alabama than to the one which you find in Indiana?

A Oh, I think quite clearly.

Q Dr. McCleskey, do you feel that there is an identifiable area in Dallas County which might be characterized as a Republican voting area?

A I understand that to be the case, yes.

Q All right, sir.

A I understand by Republican voting a pattern of consistent support for the candidates of that party.

Q Yes, sir. What I understand by it is when they vote for the Republicans.

All right, sir. I don't have in mind any technical term. And they do it over and over again?

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A Yes.

Q And you can locate them on the map roughly?

A Yes, and there are varying degrees of concentration, obviously, but you can, indeed, locate these areas and you can predict pretty well, as every politician knows from one election to another about what the vote will be in those respective areas.

Q Very quickly, Doctor, I have three general questions.

As you doubtless know, a selection was made of single member districts for Harris County and one general conglomerate multimember district for Dallas County.

Can you think of any characteristics which are so different between the two counties, such as geography or demography or whatever, other than just pure politics, which would justify such a discrimination?

A I cannot think of any objective criterion that would account for that difference.

Q Is it more expensive, Doctor, for a candidate to run a county-wide race, as is required in Dallas County under the present dispensation, than would be for him to run in a single member district legislatively?

A I don't think there would be any question at all about that. If you are comparing a multimember race

with a single member district race for the same type of office, then you would expect that almost always the multimember district is going to be a much more expensive race, and the larger that district is, the greater the expense is going to be.

Q He's going to have overkill, for example, and he is going to have to pay for advertising and so forth which will do him essentially no good?

A Right.

Q All right, sir. One last thing. You touched on accountability earlier, and by accountability I mean the whole flow of constituent to representative -- representative to constituent.

Would you tell the Court how the accountability factor is influenced by the choice of multimember districting as against single member districting?

A Well, that seems to me a matter pretty much basic arithmetic. One representative from a county with a population of one million people, say, is going to be able to give any one of those persons very, very little of his time. He will be able to give somewhat more attention to, have somewhat more concern with constituents in a district of 74,000, and I think this is very important for the concept of representation, the opportunity for

individual citizens to have contact with, to interact with their elected representatives, and the larger the district the less likely that is.

Q And I suppose it runs the other way, too, Doctor, doesn't it, that is, the representative has a great deal more difficulty in being for what his constituents want him to be for?

A Sure, the larger the district, the more heterogeneous it is, and it becomes almost impossible with the best of good faith on his part -- it becomes almost impossible for him to serve all of his constituents, because he can't know.

Q Unless we could break him down into individual percentiles, so that 17 percent of him would be for one thing, representing those interests, which, of course, is obvious impossible.

A No, there really isn't any way of doing it.

Q All right, sir. I suppose it is a fact, isn't it, Doctor, that there are United States Senators elected from areas, such as perhaps Alaska, who have to approach a smaller constituency than a man who wants to be elected to the Texas Legislature from Dallas County?

A Yes, indeed. There are several states in which the members of the United States Senate have a much

smaller constituency than does a member of the Texas House of Representatives, which seems to me to be getting a long way from the original notion that the lower House of the State Representative -- the lower House of the State Legislature was to be that body closest to the people.

Q And I suppose, Doctor, extrapolating from what you have said already, that as the size of the multi-member district increases, the number of the legislators trying to represent all of the voters in the area increase, the invidiousness which you have described of the multi-member district also increases?

A I think so. The minority there is simply going to be submerged that much more, the larger the district.

MR. GEE: Thank you very much, Doctor.

MR. EASON: Nathan Eason from San Antonio.

CROSS-EXAMINATION

BY MR. EASON:

Q Doctor, I simply want to qualify you on your answers as regards to Bexar County in regards to

multimember versus single member districts.

As I understand, you did testify the costs in running in a multimember district would be greater than in a single member district in Dallas County.

Would this also be true of Bexar County?

A Oh, I'm sure it would, though, since the number of representatives is somewhat lower, the costs would not be as disproportionate as in Dallas County, but you would still find, I think quite certainly, that the cost of running on a multimember basis is going to be far in excess of what it would be for that same office in the single member district.

Q Yes, sir. Now, the accountability situation that you testified about, would this also be true in Bexar County?

The personal representation of the single member representative, he would be closer to his constituency in a single member district than he would in a multimember district?

A I think so. I think that would be true in Bexar County, as well.

Q Yes, sir. Now, as I recall, you also testified that you knew of no objective criteria whereby Harris County was given single member districts and Dallas County

was given multimember districts. Is this true?

A That is true.

Q Would the same thing be true about Bexar County?

A I believe so.

Q Yes, sir. Do you know, Professor McCleskey, whether or not Bexar County has an identifiable Republican area?

A Yes, I believe that is the case, again, understanding this to be areas in which people pretty consistently support the nominees of the Republican Party for President, Governor and Senator.

Q Yes, sir. Well, are you aware that in the northeast corner of Bexar County Republicans have elected a County Commissioner and Justice of the Peace?

A Yes, those being single member districts, in effect.

Q Well, at least a concentrated area not running across the county at large?

A Right.

MR. EASON: Thank you.

JUDGE JUSTICE: Mr. Idar?

MR. IDAR: Ed Idar, Jr.

CE - McClesky

CROSS-EXAMINATION

BY MR. IDAR:

Q Dr. McClesky, you are testifying here in the Dallas portion of this lawsuit. My co-counsel from Dallas is not here, so I don't know to what extent you might have been asked to consider some of the issues we are particularly interested in.

I have observed your testimony closely, and it appears to relate by and large to the black minority. I am wondering whether or not you have made any study or have enough information to express an opinion as to the Mexican-American minority, and I would call to mind particularly in relation to that minority that in contrast to blacks, they do have in my estimation an additional burden or handicap, which is a language handicap.

With that in mind, are you able to enlighten this Court generally along the lines of the problems of the Mexican-American minority?

A Well, I should think that generally speaking the smaller the minority is, assuming that it, nevertheless, remains large enough to be significant, the smaller

it is, the greater handicap it labors under in a multi-member county-wide district for the simple reason that it is going to be much harder for them to achieve any kind of leverage in the political process, which means that it is more likely that their interests are not going to be articulated and represented.

Q What I had in mind particularly, for example, you made some reference to the use of these slate cards that the average citizen, even the best educated ones, may have to use in the long ballot to try to remember who they want to vote for, and how would that affect the Mexican-American minority, having this language handicap?

A Well, obviously, if they are not able to use slate cards, it would make it much more difficult for them, because it is going to be harder for the person who is not fluent in English to be able to remember all of these candidates, or, for that matter, to remember which offices he wants to vote for and which ones he does not.

(No omission here.)

Q Have you made any kind of study as to whether this type of device that we are talking about, this slate card, and other devices that have been used in Texas politics, lend themselves particularly to fradulent practices?

A Well, I think probably the law prohibiting the use of such materials was a reformed measure that is aimed at this problem, but what is so very interesting to me is that the needs of the average uncorrupted straightforward voter are so great that that provision has, for all practical purposes, been ignored until you have an election judge who wants to keep people out of the polls, and I have seen that happen sometimes.

MR. IDAR: I believe that is all. Thank you.

JUDGE JUSTICE: Anything further from the Plaintiffs' attorney? The Defense may cross examine.

MR. JAWORSKI: Yes, sir. I have just two or three questions, may it please the Court.

JUDGE JUSTICE: Would you state your name for the record, Mr. Jaworski?

MR. JAWORSKI: Leon Jaworski.

CROSS EXAMINATION

Questions by Mr. Jaworski:

Q Have you ever visited Marion County in Indiana?

A No.

Q Have you ever made a study of Marion County, Indiana?

A No. I am not concentrated on Marion County. I have read some articles on Indiana politics, generally.

Q Have you ever visited Indianapolis?

A Yes. I have been in Indianapolis.

Q Have you ever made a study of conditions in Indianapolis?

A No, I have not.

Q Are you familiar with the fact that Indianapolis has a very large Black ghetto?

A Yes, I am.

Q Nothing like it in the State of Texas, is there?

A Well, it depends on what you mean by "nothing like it".

Q Well, is there any ghetto-- Black ghetto of

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the size that Indianapolis has, in the State of Texas anywhere?

A Well, I think if you understand by "ghetto", an area by which people are poor and uneducated and living in substandard housing--

Q Talking about a Black ghetto, yes, sir.

A Yes, indeed.

Q Where?

A Houston and Dallas.

Q Where in Houston?

A In the area north of the downtown area. I can't remember whether that is the old third ward or fifth ward. I always get them mixed up.

Q How large is the Black ghetto in Indianapolis?

A I am sorry. I don't recall the exact figure.

Q How do you arrive at the conclusion that Dallas or Houston has that large a Black ghetto?

A I know that those cities are larger cities than Indianapolis and I know that the percentage of the Black population is sizable in both of those cities. I have been in both of those cities and I have seen those areas and therefore, I think when you ask me is there anything comparable, I think there is.

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Q Well, what is the size of the Black population in the Black ghetto in Indianapolis?

A I cannot give you the exact figure.

Q You can't even come close to it, can you, Doctor?

A No. I probably cannot, because it depends, in part, on how you define "ghetto", in terms of the standards that you employ. If we take the standard that we used in the Chavis case, you come up with one set of figures and if you use the standard of someone else, you come up with another set of figures.

Q Suppose we use the standards that were employed in the Chavis case, now that you have mentioned the Chavis case. What is the size of the Black ghetto?

A I don't recall in that case any mention of the exact numbers of the people involved.

Q You have undertaken to give testimony about conditions that exist in the Indiana as compared with the conditions that exist in Texas, have you not?

A Yes.

Q But you are not prepared to tell this Court about the conditions that exist in Marion County?

A No, I am not.

Q And the Chavis case dealt with Marion County?

A As I read the Chavis case, it deals as well with the State of Indiana.

Q But it dealt particularly with Marion County and the Black ghetto in Indianapolis, did it not?

A Yes, it did that.

Q Now you are not a lawyer, are not?

A No, I am not.

Q Have you ever studied law?

A No. If you mean by that have I been in law school, the answer is no.

Q Well, you had spoken of what the law was in Texas at one point and you also spoke of the Gomillion case that was cited by the United States Supreme Court, and I thought perhaps you had some education in law.

A As part of my training, graduate training, I did work in the study of constitutional law, including a seminar with Professor Southerland at Harvard in the Law School.

Q But you are not a law graduate?

A No, I am not.

Q Nor have you pursued legal studies?

A No.

Q All right, sir. Do you know whether or not Indiana has home rule statutes similar to those in

Texas pertaining to home rule?

A I think it has.

Q Do you know it to be a fact?

A I don't know it to be a fact, but I know that most states do have it and I believe Indiana is one of those, but I cannot say with certainty.

Q You just assume it because most states do?

A Because I have a general impression.

Q You also made some comment with respect to the similarity of conditions in Alabama and Texas.

A Yes.

Q Have you made a study of the conditions existing in Alabama?

A I think I know something about the State of Alabama.

Q No. I asked you have you made a study of it?

A Yes. If you mean by that have I read and have I thought about it and have I explored that, yes, I have.

Q Have you visited Alabama and made a study so that you can speak of it of your own personal knowledge, sir?

A Sir, you understand that a scholar does not

necessarily have to visit an area to make a study of it.

Q I am addressing you as a witness, at the moment, sir, and all I am asking you is if you have made a study of it?

A I am testifying as a scholar and I am testifying that I have read extensively from literature concerning the politics.

Q Do you mind answering my question, sir? Have you visited Alabama and have you made a study?

A No, I have not, to make a study.

MR. JAWORSKI: Thank you.

CROSS EXAMINATION

Questions by Mr. Luna:

Q How long have you been in this courtroom this morning? By that, I mean were you here when the witness testified immediately preceeding you?

A I caught part of that, but not all of it.

Q All right, sir. Have you ever participated in a political campaign in Dallas County?

A No, sir.

Q Have you ever lived there?

A No, sir.

Q Well, I understood you to say earlier

I am not that might indicate some prospects in that direction, but if you look at the history of Dallas County elections, I see no reason to make that kind of prediction.

Q Let's look at the future, based on the scholarly studies you have done. Would it be reasonable to assume that as many as three Blacks would be elected out of eighteen in Dallas County, if the elections are at large?

A If you mean could I imagine it, the answer is yes. I could imagine only one or I could imagine none, if for that matter.

Q But it would be a reasonable assumption?

A That's right. It is not unreasonable.

Q Now, if the Black community-- well, if the Blacks are elected on the ticket, Doctor, there would be no reason for a political party to want to have a Black on a ticket who did not have support of the Black community, would there?

A Well, that is not necessarily the case, because Blacks will give different degrees of support from that community. There are some Blacks who could come out of the Black community with let's say one hundred per cent, virtually, and there are some that could come out

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of there with sixty-eight per cent and the rest of the White community might prefer to have that Black come out of there with sixty-eight per cent because he is more acceptable to them.

Q Have you ever lived in Dallas County?

A No.

Q What is the longest period of time you have ever spent there?

A Oh, probably two weeks.

Q Have you studied Dallas County politics?

A Yes. I think I can safely say that I have.

Q Have you made a scholarly study of Dallas County politics?

A Yes. I have in the sense that -- I incorporated materials in a larger work which dealt specifically with Dallas County.

Q How long ago?

A This was in 1964.

Q 1964?

A That that particular study was done, yes.

Q Now, in 1964 to day, wouldn't you say that there has been such great change in politics in Dallas County that what you learned prior to '64 is not even relevant any longer?

A No, sir. That is not true.

Q Not true?

A The person who dropped out of politics in 1964 could come back to Dallas in 1972 and would not be at all lost in that situation.

Q Had a Black ever been elected in 1964?

A No. But you have to understand that that is not, in itself, any indication of a major transformation in Dallas politics.

Q Had a Black ever been elected to the City Council in the City of Dallas in 1964?

A No.

Q Had a Black ever been elected to the School Board in the Dallas Independent School District in 1964?

A No.

Q So then wouldn't you say that from that time to date, there have been an increasing interest in activity and involvement in the Black community in the political affairs of Dallas County?

A I think that is quite true, but that does not mean that any major transformation has taken place.

Q Doctor, you told us earlier that if we had single member districts, that a Black who was elected in let's say, Oak Cliff, would adequately

represent the interests of a Black who lived in Garland? Did I understand you right?

A That is slightly an overstatement. I am saying that the Black who is in the losing area may achieve a degree of representation, nevertheless, in other areas, but I don't think it is the same by any means.

Q You don't think it is the same?

A No.

Q So in the single member districts, then if we had them, other than those three out of the 18, would the others have any representation as you see it, since no Black would be representing their area?

A They would have representation, indeed, in the sense that I just mentioned, that there may be a willingness on the part of these elected representatives from other areas to help try to protect their own interest.

Q And a County-wide District, in the one that is not elected county-wide, and the three that you told us, might be reasonably -- may reasonably -- in all reasonable probability, be elected next year --

A -- no. Reasonable probability is not my word.

Q Well, you agreed on that, didn't you?

A No. I didn't say "Reasonable probability". I said it is not a reasonable assumption.

Q Let's say assuming that three Blacks are elected in '72 or one in '72, is there -- on a County-wide basis, is there any reason why those Blacks would not reasonably represent the interests of Blacks all over the County?

A I think there is. These Blacks who are elected county-wide, are in fact, responsible to a much larger constituency which sets very real limits as to what they can do, both in terms of their workload and in terms of the range of interest they have to cope with.

Q Now, Doctor, when we elect -- now, if we isolate the Black population in single member districts and elect just Blacks from that area and some other color from some other area, aren't we polarizing the community?

A Well, please understand that I am not saying that the district lines should be drawn with an eye to isolate this group or that group. I am not testifying to that effect. What I am testifying to is this: that the multi-member district makes it a very, very difficult -- I think it is unreasonably difficult

for an interest such as -- I think it is unreasonably difficult for an interest such as the Black community has to achieve full and effective participation in the sense of not only access to the ballot box, but effective representation as well.

Q Do you have an opinion on whether or not that would tend to polarize the community, if elected from that kind of district, as distinguished from integrating the community when elected at large?

A I think it probably would not make that much difference. In fact, it is possible that it might help in this way; as you well know, campaigns have been run in Dallas County in the past in which candidates and groups, sometimes overtly and sometimes covertly, have made racists kind of appeals. Because the fate of the whole delegation was thought to turn on this. 15 seats were at stake. If single member districts are used so that the stakes are not so high, then there is less incentive. Why should that person, in an all-white district, worry himself very much about making racist kind of appeals. Why should he try to polarize. Why should he raise campaign?

Q Do you know, Doctor, that percentage-wise, and according with their -- the relation to

population, that there are more Blacks registered in Dallas County than whites?

A I think that difference is statistically insignificant if you took count the age levels.

Q . Well, is it true?

A If you took into account the age levels, I think you find in fact, that there is no difference.

Q Although it is your opinion that it is insignificant that more Blacks, percentage-wise, are registered than whites? Do you know for a fact that it is true from the scholarly studies you have made from Dallas County?

A Well, I have not examined this year the registration in Dallas County, and I cannot say I know this. Now, I understand that to be the thrust of Mr. Weiser's testimony.

Q And do you know that also in Dallas County the Blacks vote in about that same percentage? In other words, a higher percentage of Blacks vote than whites?

A Well, I think it is about the same and perhaps, depending upon the race you are talking about --

Q -- wouldn't you say therefore, that

that would lead to the conclusion that the Black population involves itself in the access to the political system in Dallas County in larger numbers than does the whites?

A No, sir. That is not true. Because it depends upon the other end of the process that I talked about. It talks about -- it depends upon how the representation on institutions are structured, and it is perfectly possible to have people voting all day long and the vote to be relatively useless, because of the way the rules of the game are rigged against them.

Q So the fact that one man gets one vote does not impress you?

A That is a necessary, but not efficient condition for an effective representation.

Q Doctor, in Harris County and in Dallas County, would you think that it is necessarily important that one -- let's assume that in Dallas County, a multi-member district did not show any discrimination, and that in Harris County, multimember districts, did show discrimination. Then would you say there ought to be a choice?

A Would you explain to me what you mean by "showing discrimination"?

Q Let me withdraw it and rephrase it and ask it another way: as we have said so often in the Green case --you are familiar with it, aren't you?

A Which case?

Q The Green case. The school case. Well, let me go ahead from that, then. Isn't it more important, rather than the name of the man, whether it is multi-member or single member -- isn't it more important that it work and does it work effectively without discrimination? Isn't that the important thing, Doctor?

A Oh, Doctor, I think so, and this is why I would not say that multi-member districts are everywhere and always going to result in discrimination. I think you do need to look at particular cases.

Q Fine.

A And I think if you look at Dallas County, that is what you find, that there is a consequence there, which results in prejudiced representation for the Black community.

Q When is the last time you have been in Dallas County?

A March.

Q In March of this year? Now, you have

made no study of the political climate in Dallas County since 1964?

A I try to keep abreast of what is going on in Dallas County, but I have not written and published material on Dallas County since that time.

Q Have you made a study of it since that time?

A Yes, I have worked with figures from Dallas County. I have read Dallas newspapers and so on, so I have tried to keep abreast.

MR. LUNA: Thank you, sir.

MR. COLLINS: We have no further questions, Your Honor.

JUDGE GOLDBERG: I may want to ask a question. Is everyone finished?

QUESTIONS BY JUDGE GOLDBERG:

Q As a political scientist, you apparently believe in the single-member district. What ingredients should go into the determination of single-member districts?

A The only form that I am prepared to offer is the one that Congress itself layed down many years ago: Compact, contiguous and equal.

Q Compact, contiguous and equal with respect to what?

A To population.

Q You would not seek color representation, economic representation, ghetto representation?

A I would assume that if the political forces that are involved in drawing those lines are themselves at all representative that there would be some account taken of those forces.

JUDGE JUSTICE: Are you referring to community of interest,, then?

A Yes. I think that is-- that would be included.

BY JUDGE GOLDBERG:

Q Do you think, as a political scientist, that districts should be selected so that a Black can be elected?

A No, I don't.

JUDGE GOLDBERG: Thank you very much.

JUDGE JUSTICE: No further questions. You may stand down, sir. Call your next witness, please.

MR. COLLINS: Your Honor, I will have to get Mr. Richards right outside; he has the next witness out there, sir.

MR. McDANIEL: Your Honor, might I make an inquiry while we have a moment's delay?

JUDGE GOLDBERG: Yes.

MR. McDANIEL: What is the deadline for filing depositions? I have one witness in San Antonio who goes to trial in Judge Spears Court in the morning in a criminal case in which they have had the jury picked all week and I may have to take his testimony by deposition.

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JUDGE JUSTICE: I think they were previously set at Wednesday evening; that is as far as the Plaintiffs are concerned. The Plaintiffs have, I believe, all day Wednesday, but insofar as the Defendants are concerned I believe they had the last two days of the trial. And, whatever length of time it took the transcribe those depositions-- As I recall, it was three or four days.

MR. McDANIEL: Yes, I recall that was the original understanding. I wanted to know if that was still in effect because we had some changes made.

JUDGE JUSTICE: Yes.

MR. McDANIEL: All right, fine.

MR. IDAR: May it please the Court, I am anticipating the Bexar County portion of this lawsuit will start probably this afternoon, Your Honor, and I am the attorney that is going to have to be involved in the prosecution of that aspect of the thing. I don't know that-- in this stage of the trial-- that I would be able to safeguard the interest of my people by having to concern myself about a proposed deposition--

JUDGE JUSTICE: I am sorry, would you come

forward?

MR. IDAR: I am not so sure that I will be able to adequately represent the interest of my people by having to be concerned about the depositions they are going to take tomorrow. I might advise the Court that I think the witness he has in mind we discussed three or four days ago. And, it is only at this stage--

JUDGE JUSTICE: Let's find out the specifics about it. What witness are you referring to?

MR. McDANIEL: I am referring to Roy Barerra, but I don't thing the problem counsel anticipates is going to be a problem. I anticipate handling the Bexar County problem myself, and if it is necessary to take Mr. Barrera's deposition rather than have him here as a live witness I would assume we would probably take that deposition on Friday, of necessity, because he expects to be in trial tomorrow and Thursday. I would also anticipate that--

JUDGE WOOD: I will talk to Judge Spears and see if we can't get Mr. Barrera here. But Friday, I think is too late, counsel.

MR. McDANIEL: We will be delighted to have him here.

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JUDGE WOOD: We are trying to finish this case, you understand, by tomorrow or sometime Thursday noon. Friday would be too late. I will talk to Judge Spears and see if we can't make arrangements to have Mr. Barrera here. When would you like to have him here?

MR. McDANIEL: In the morning.

JUDGE WOOD: I will call Judge Spears and see if we can't have Mr. Barrera here in the morning.

JUDGE JUSTICE: Is that satisfactor, Mr. Idar?

MR. IDAR: Yes, sir.

MR. RICHARDS: I will call Senator Mauzy, please.

OSCAR MAUZY,

a witness called by the Plaintiff, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Richards:

Q Can you give us your full name, please, sir?

A Oscar Mauzy.

D. E. - Mausy

Q Where do you reside, Mr. Mausy?

A At 1338 Acapulco Drive, Dallas, Texas.

Q How long have you been a resident of Dallas?

A For twenty years.

Q You are currently the Senator from the 23rd Senatorial District, is that correct?

A Yes.

Q From Dallas County?

A Yes.

Q And, when were you elected to that office?

A In 1966.

Q All right. So there will be no mistake, you are a partisan in this issue of single-member-- multi-member districts is concerned?

A Yes, I am, Mr. Richards. I participated in the filing of this case, I participated in the filing of the Kilgarlin case in 1963, I participated through the Kilgarlin case as counsel and I have long advocated single-member districts through the courts and through the political processes.

Q Your active participation as counsel in this case, I think, came to a halt several weeks ago when you were hospitalized for a brief time for a backache, is that

correct?

A It was Christmas Eve that it came to a halt, and I was hospitalized for five days.

Q Yes, sir. Just very briefly, give us some background and political activities that predate your becoming a Senator-- very briefly.

A I have been interested in politics all my life. My mother was an election judge and precinct chairman. And, as a child I handed out cards for candidates. As a student at the University of Texas I was active in the Young Democrats. I held office in student government at the University of Texas Law School. I was president of the Dallas County Young Democrats from 1954 to 1956. I was the National Committeeman for the Young Democrats of Texas from 1954 to 1956. I was a candidate, unsuccessfully, for national president of the Young Democrats in 1959.

Q All right, sir.

A I was a Democratic precinct chairman from 1962 to 1966 in Dallas County, Texas.

Q All right. Your first race for public office was a race for the State Senate in 1966, is that correct?

A Yes, sir, that is correct.

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Q May I approach the witness? Senator, this is in evidence as Plaintiffs' Exhibit 1; it is a census tract map of Dallas County. The shaded precincts being those that have been predominantly Black. Without attempting to describe in detail your own senatorial district, can you generally tell us which portion of the county you represent?

A I represent this portion of the county that is south and west of the Trinity River in Dallas County. A majority of the areas that have been described as in the shaded areas are in my senatorial district.

Q Are you generally familiar with the condition of the Black citizens, the Black minority, that live in your district in terms of economic level, housing and other interests?

A Yes. I am by personal observation, by my experience as a lawyer representing many people who live there, in my capacity as State Senator trying to look after the needs of that area.

Q All right. If you would, in rather general terms, could you characterize for us the condition generally of persons in this so-called Black area as regards to certain income levels, housing and other things of that nature?

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A The income level is substantially lower than the White majority of Dallas County; the housing is substantially inferior, by and large, to the housing of the White majority in Dallas County; the public transportation is less available than it is in the White areas of Dallas County; the crime rate is higher than it is in the White areas of Dallas County; the streets are not as well kept; there is less lighting. The general standard of living is substantially lower. The economic level is dramatically lower.

Q All right. What in your opinion, and based on your observation, is the explanation for this lower--for these conditions you have described?

A By and large, I think it is a carry-over of the segregated system that for many years has characterized Texas life. The Black citizen in Texas for many years, by law, was segregated and not permitted to participate either in the election system or in the educational opportunities available to the other citizens of this state. The Black community, by and large, has been isolated, it has been segregated, it has been discriminated against. It has not had the same opportunities of citizenship that we Whites have had.

Q And it your view, at least, this is reflected

today in the economic conditions that affect the Black area-- or ghetto-- as it might be described in Dallas County?

A Yes, it does. I don't think the same chance for economic advancement exists among the Black citizen of Dallas County today as exists among the White citizen because of his lack of educational opportunities in the past and because of his lack of ability to participate.

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BY MR. RICHARDS:

Q Of course, we recognize, I am sure, that the black community of Dallas County obviously shares interests with the dominant white interests. There are common interests, aren't there?

A Certainly, the black citizens of Dallas County are just as interested in controlling the crime rate was the white citizens are, and they are just as interested in State Government, Federal Government, in world affairs. Certainly, there are many things that all of us share together.

Q But are there certain interests or certain characteristics of this black ghetto, if that is a description, which they suffer more intensely than is experienced by the white community?

A Yes, I think the black areas of Dallas County have needs which are peculiar to them, both peculiar in that they do not apply to a majority of the whites, and they are much more severe in black areas than they are in the white areas.

Q Are these in some of the areas that you have indicated---?

A Basically the areas that I have indicated are in housing, educational opportunities, transportation, public

services, income levels.

Q Turning now to another matter, in your view is it possible for state legislative candidates running county-wide in the Democratic Primary in Dallas County to receive the nomination of the party and ignore entirely the interests of the black minority in their campaigns?

A The -- yes, sir, they have all done it by and large, not all of them, but those in contested races who have been anointed by the DCRG, the power group, have by and large been successful with very rare exceptions.

The only exception that I can remember in a contested primary race was Representative Dick Reed in 1968, and that was because of a set of peculiar circumstances that existed in that race.

Q Well, perhaps, since you have opened it up, you might explain to us what you consider to be the peculiar circumstances and explain the Dick Reed nomination.

A There was a three-way race for the nomination for the place that Representative Reed was seeking, of the DCRG endorsed candidate, Mr. Reed and a third candidate.

When the unofficial tally was announced midnight election night, it indicated Mr. Reed and the third candidate were in the runoff.

When the Canvassing Committee of the Democratic Executive Committee, which was made up of DCRG members, met Sunday to canvass and to certify the primary results, it was announced that Mr. Reed was not involved, but rather, the DCRG candidate was.

Then, in my capacity as Mr. Reed's lawyer, I obtained an order from the State District Court to open the machines and to conduct a recount.

That recount lasted for some 14 or 16 days, at the end of which it was demonstrated that Mr. Reed had, in fact, won a place in the runoff.

Q Did Mr. Reed, as a consequence of that, get substantial publicity in Dallas County?

A He got publicity that no political candidate could have paid for. He was on the front page of every newspaper for 14 or 16 days. He was on every television station, every radio station. It would have cost him half a million dollars to get as much publicity as he got.

Q The testimony we have today in part reflects a rather infrequent contest in the Democratic Primary for state legislative seats in Dallas County.

Do you have an opinion as to why this is true?

A Yes, I do.

Q What would be that opinion?

A Largely it is because most independent candidates feel that if they cannot get the endorsement of the DCRC, they cannot be successful, and certainly, history bears that out.

The only way that they could be successful in bucking the DCRC would be to spend in my opinion between 150 to 200 thousand dollars to run for office, because you have got an electorate of half a million qualified voters. You have got over 300 precincts. You have got all the costs of campaigning. The candidate has the job of distinguishing himself as one candidate in what will now be 18 legislative seats, in carving out a place for himself in public life, to display his qualifications for office.

All of these things would cost a tremendous amount of money. Most people don't have it. That's the reason it hasn't been done.

Q How many -- if you recall -- I think the ballots are in evidence, but roughly, how many places -- races appear on the Democratic Primary ballot in Dallas County, for example?

A It would be over 60. You have a number of

District Judges, County Court-at-Law Judges, 15 members of the house, one Congressman, one County Commissioner, one State Senator, one Constable, one Justice of the Peace, one Precinct Chairman.

Q My recollection is that the bulk of the Dallas County elections are still conducted on the old standup voting machines. Is that correct?

A Yes, sir, and this year they will all be conducted there. The Commissioners Court has just voted to go to that system exclusively.

Q As I recall, actually, it is not even possible now to list all the races in the Democratic Primary ballot across the machine on the front of it. Is that correct?

A That is correct, and there is a sample ballot that is in evidence as an exhibit that demonstrates that you cannot list all the races across the top of the machine.

Q Parenthetically, there is in evidence from the Defendant, Mr. Luna, certain cost figures with respect to candidates filing returns in the County Clerk's Office.

Have you had occasion to glance at those figures?

A Yes, I have.

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Q First, state whether or not most of those figures were filed at a time when the statute did not require candidates to report expenses on their behalf made by others.

A That's correct. This exhibit shows 1966 expense reports of candidates in Dallas County. They were not required to report what others spent in their behalf. They were only required to report what they spent themselves and what their designated campaign managers spent at their direction and in their behalf.

Q I noticed that one of the people on that list was Jim Collins, which reflects no expenditures whatsoever in his rather highly publicized race for Congress. Is that correct?

A There are a number of instances on this exhibit that I find -- I am sure they accurately reflect what was filed with the County Clerk's Office. I have no question---.

Q Right, but without going into detail on it, you state that it does not accurately reflect the total expenditures that were made in those races?

A I know it is not totally accurate, because Congressman Collins listed no expenditure whatever, and I know he had to pay a filing fee.

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Pat Robinson lists no expenses whatever, and I know he had to pay a filing fee.

Q No further on that then.

Now, is there in your view -- well, first, I asked you a moment ago whether you felt a candidate running county-wide in the Democratic Primary could afford to ignore -- for the Legislature -- could afford to ignore the interests of the black minority.

Would the same be true, say, in your Senatorial District? Do you feel that a candidate running in that district could safely ignore the interests of the black minority?

A No, I think not. When I first ran for the Senate in 1966, approximately 26 percent of the population of my district was black.

In 1970 when I ran for re-election, it was approximately 30 percent, and that's a substantial portion. No candidate should ignore any portion of the district he runs from, but it is much more significant there.

Q All right, but is there functionally in your view or in your opinion any difference between the race for a senatorial district in less than county-wide and a county-wide race for the Democratic legislator's seat?

A Yes, there is. I think the smaller the area

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the smaller the number of people involved, the better the candidate can know the needs of that area and can better respond to those needs by articulating his position on those needs.

Q What about the voters themselves?

A The voter can better become acquainted with the position of the candidate, because the candidate is more visible to him. The candidate is more accessible to the voter, and the voter is more accessible to the candidate.

Q Now, Senator Maury, would you turn with me now for a minute or two to another question, and that is, somewhat the existence of racial discrimination against Negroes in Dallas, both at the time you came to Dallas and as you see it today.

Could you describe just in general terms the prevalance of it or the absence maybe?

A I came to Dallas as a graduate of the University of Texas Law School in January of 1952, at which time segregation was still the law and was still completely practiced in all phases of life in Dallas, and there has been improvement since then, because of the Supreme Court opinion knocking out segregation in various areas, in education, public accommodations and other areas.

Obviously, it has improved, but there is still segregation practiced today in Dallas County, Texas.

Q Just turning your attention to one matter here, do you remember that the Dallas County Jail, for example, up until at least or a year and a half ago still had different black and white visiting days?

A My recollection is from visiting clients. It was about a year and a half ago that that sign came down. You could only visit black prisoners on certain days and white prisoners on other days.

Q There are vestiges still remaining of the Old South. Is that correct, in Dallas?

A Very definitely in Dallas. It was only recently the colored and white signs were taken down from the water fountains and restrooms in the Dallas County Courthouse.

Q All right, sir. During your political activities in Dallas County did you ever encounter any resistance on the part of permitting poor Negroes to vote in the Democratic primary?

A Yes, sir. The most recent example I know of was in 1956.

Q Tell me about that.

A A friend of mine was running for Precinct

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Chairman and I was helping him. There were a number of Negro citizens who lived in this precinct, and whom we were trying to get to vote for him. They said they would love to, but they were not permitted to vote.

I couldn't believe this, so I told them to meet me at the polls at five minutes to 7:00 on Election Day and we would see about it, that I would be the first voter and they could be the second.

I was permitted to vote, but the Election Judge did not permit them to vote.

I then had to go and get the Sheriff's Office to come out and inform the Election Judge that black people were now allowed to vote, as well as white people in the Democratic Primary.

Q That was in 1956?

A Yes, sir.

MR. LUNA: Please the Court, we had an agreement in the Pretrial Order that no party was going to offer any evidence that anybody had attempted to keep anybody from voting in Dallas County. We object to this. It is in violation of that order, and further, it is the rankest of hearsay.

Q Well, you were present then, were you not?

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A Yes, I was present.

MR. RICHARDS: So, it is not hearsay.

JUDGE JUSTICE: I recall there seems to have been some kind of stipulation to that effect.

MR. RICHARDS: "In the recent past," I think were the words of the stipulation, and I guess I may have---.

JUDGE GOLDBERG: Clearly, it is not overly relevant to the ultimate issues in this case. '56 has been a long, long time ago.

Q Senator Mauzy, if you would for a moment, turn now to the Democratic Committee for Responsible Government. Are you generally familiar with its operations?

A Yes, sir, I certainly am.

Q Were you present here in the courtroom when Mr. Weiser testified earlier this morning?

A Yes, sir.

Q Has it been your observation that this organization, at least, as matters now stand in Dallas County dominates the nomination of legislative candidates in the Democratic Primary?

A They do those county-wide. They don't those

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in the senatorial districts. They have fought me every time I have run, as they fought Senator McKool in the other district and Senator Harris in the 3rd District.

Q And you have observed as a political person in Dallas County, in your view has the hostility of the white majority in Dallas County toward black interests that was manifested in segregation in the schools, churches and housing been eliminated?

A It has not been eliminated.

Q You could still consider it to be a force in Dallas County politics?

A Yes, it is. County-wide it can be the deciding force.

Q You are familiar with the mailings that were put out, for example, through the DCBC letterhead in 1970 against candidates Brashear and Stahr?

A Yes, I received that at my home, which is in a precinct that has no black voters.

Q Was that the mailing that had a picture of Barlaind Brashear on it?

A That's all it had was Mr. Brashear's picture. In my opinion it was pure racism, because it showed he was a black man. It didn't say a thing about his qualifications. It just said, "Vote against him."

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Q Did it describe at all his political views?

A Nothing whatsoever but his picture.

Q Did it contrast -- did the mailing you got have a picture of his opponent on it?

A Yes, sir.

Q Showing him to be white?

A Yes, sir.

Q Have you seen other instances in recent years where appeals to this racial hostility of the white majority is still employed by the DCRG in its candidates?

A Yes, sir. It was used against me both in 1966 and 1970, and I have seen it used against other candidates in Dallas County.

Q Do you have some specific piece of literature in mind in that connection?

A Yes, I do. I have the mailing that was sent to every white precinct in my senatorial district just before the Democratic Primary in 1970.

(REPORTER'S NOTE: Document was marked for identification.)

MR. RICHARDS: Mr. Luna has not seen this before.

(REPORTER'S NOTE: Counsel examine exhibit.)

MR. RICHARDS: I'm sorry, Your Honor. I wasn't able to dig that up last night.

JUDGE JUSTICE: You move to amend the Pretrial Order?

MR. RICHARDS: To include what has now been marked as Plaintiffs' Exhibit 94.

JUDGE JUSTICE: All right, you may be permitted to amend the Pretrial Order.

Q I hand you what has been marked as Plaintiffs Exhibit 94. Is that the item to which you referred in your testimony a moment ago?

A Yes, sir, Plaintiffs' Exhibit 94, the best I can ascertain, was mailed to every registered voter in every white precinct in my senatorial district in the May, 1970, Democratic Primary.

Q It refers to Oscar Mauzy, Ed Polk and Ruth Jefferson.

Now, we know who you are, but who are Ed Polk and Ruth Jefferson?

A Ed Polk is former Director of Legal Services Project in Dallas, who has filed a number of class action

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lawsuits in behalf of poor blacks and other poor people in Dallas County, against county government, state government and various governmental institutions.

Q Was he prominantly identified in the public mind with the interests of the poor black in Dallas County?

A Yes, he was very prominantly identified at that time.

Mrs. Ruth Jefferson is a Negro lady who staged -- led a sit-in of Welfare mothers at the Dallas County Welfare Office and has been active in behalf of particularly Welfare recipients.

Q Had they been publicly associated in your campaign in any way?

A DCRG always seeks to associate them with me in the white precincts. They never seem to mail it to the black precincts, though.

Q In your opinion, Senator Mauzy, can an independent candidate -- by that I mean one running independent of the DCRG slate -- either black or for that matter white, who identifies with the interests of the black community, succeed county-wide and obtain a nomination in the Democratic Primary for a Representative seat?

A Not in my opinion except with rare exceptions, like when Dick Reed was nominated in '68 and then

renominated in 1970 because of the record he had made. 35

Q He was an incumbent, of course?

A He was an incumbent, but an independent candidate running for an open office I don't think can.

MR. RICHARDS: That's all I have. Thank you, sir.

JUDGE JUSTICE: Any other Plaintiffs' attorneys desire to interrogate this witness?

MR. GEE: Your Honor, I would like to ask a very few questions. I don't know what other Plaintiffs may want to ask questions.

JUDGE JUSTICE: Court will be in recess until 1:40.

(REPORTER'S NOTE: The Court then, at 12:40 o'clock, P.M., January 4, 1972, recessed until 1:40 o'clock, P.M., the same date, at which time it reconvened.)

(No omission here.)

(Court reconvened at 12:40 o'clock P.M., after which the following proceedings were had).

JUDGE JUSTICE: I believe you concluded your Direct Examination?

MR. RICHARDS: Yes. We have concluded, Your Honor.

JUDGE JUSTICE: Who is to cross examine?

MR. CURRY: We have a couple of questions, if it please the Court.

CROSS EXAMINATION

QUESTIONS BY MR. CURRY:

Q Senator Maxey, how long have you been a proponent for single member districts in the House of Representatives?

A As far back as I can remember.

Q And you appeared before the Redistricting Board on October 6th in connection with this hearing on the House Apportionment Act, did you not?

A Yes, I did.

Q All right. And then you are an attorney

of record in this case, are you not, Senator Maury?

A Yes, sir. I think technically I have been withdrawn from the record in view of my illness week before last when it became questionable whether or not I would be able to participate.

Q But you are not a party to this suit?

A No, sir.

MR. CURRY: Thank you.

CROSS EXAMINATION

QUESTIONS BY MR. LUNA:

Q Senator Maury, in Dallas County, as State Senator, you represent perhaps the area, that is the Senatorial district area, that has the largest number of Blacks of either Senatorial District. Would that be correct?

A I think that is correct, yes, sir. It was in 1966, and I believe it is correct now, yes, sir. As you know, the new district lines that are under attack in this case went into effect January 1st. Assuming they remain that way, I think it would be, yes, sir.

Q And Dallas County was formerly represented in the Senate of Texas by a district that covered the entire county? Is that right, sir?

A Yes, sir.

Q And then Dallas County was broken down into three plus Senatorial districts, with each of those districts being a single member district, including on a part of the County?

A Yes, sir.

Q Now, when we went from the county as a whole, as a single member district, to less than that county-wide Senatorial district, Senator Maury, was there a Black elected?

A In the Senate?

Q In any Senatorial district in Dallas County?

A Not in Dallas County, no, sir.

Q So what we actually wound up with was instead of one white Senator representing Dallas County, we wound up with three white Senators in Dallas County and one from another area that represented part of Dallas County? Is that correct, sir?

A Yes, sir.

Q So then obviously, breaking it down into single member districts, whether it is the Senate or House, does not mean necessarily that Blacks will be elected, does it?

A That's correct.

Q And I would assume with some modesty, we could say that you feel as a member of the Senate, that you have adequately representated the Black interest, haven't you, Senator?

A Mr. Luna, I have tried to represent the interests of everyone in my district, Black and white, alike, yes, sir.

Q So you wouldn't feel, based on your expertise of many years in politics and government, that by virtue of you being the Senator that is representing all people, Black and white, and elected by all races, that the Blacks are any less represented in your Senatorial district than they would be if they had a Black Senator?

A I would like to think that I represent the majority and best interests of the majority of the people of my district, yes, sir; Black or white. I make no distinction.

Q But if we just limited it down to the Black people in your district, don't you also feel, and again I am not asking you to be immodest, but don't you feel that it would be fair to say that you represent the thinking of the majority also of the Black citizens?

A Yes, sir.

Q Effectively?

A Yes, sir, I try to.

Q And also the whites?

A Yes, sir.

Q Senator, in the Democratic primary, how many -- percentagewise, how many votes did you get and how many did your opponent get?

A In the primary of 1970?

Q Yes, sir.

A I believe I got 58 percent and he got 42 percent, I believe.

Q Now, those 42 percent that voted for your opponent were -- some were Black and some were white? Is that true?

A Yes, sir.

Q Now, by virtue of the fact that you were represented and that -- that you were elected, and their choice was not elected, would you feel that it necessarily follows then that those folks are not represented by a Senator of their choice?

A No, sir, because there was only 31,000 votes altogether cast in the primary and I received more than that in the general election in which I was elected

against the Republican opponent. I assume all of the people who voted in the Democratic primary followed their pledge to vote for the member of the party which turned out to be me. Which I would have supported the nominee had it turned out to be my opponent.

Q Senator, there was some testimony earlier about an exhibit that I believe you, or somebody testified was sent out by what you termed the B.C.R.G.?

A Yes, sir.

Q Indicating it had a hearing on race?

A Yes, sir.

Q I believe that was Number 94.

A I don't have it before me.

Q No. It was not 94. It was the one with the picture on it.

MR. RICHARDS: It is here.

Q Do you recall the exhibit I am talking about?

A Yes, sir.

Q What was there about that exhibit? Was it the picture of Berlin Basheers, a Black, that indicated to you that it had a racial tone to it?

A As I recall, and of course, the exhibit will speak for itself, it had the picture and

qualifications or lack of qualifications of all of the other three candidates in those two contested run-offs, but in Mr. Basheers instance, as I recall, it had only his picture. And the fact that it was mailed only to white precincts.

Q So, the fact that it didn't list qualifications for Mr. Basheers is what makes it, in your opinion, and the fact that it was mailed only to white precincts, is why you feel it had a racial tone to it?

A The fact that it did not have the same information as related to Mr. Basheers as it did all of the others.

Q Well, the fact it had his picture on it, you don't indicate that it had a racial tone to it, do you?

A Yes, sir, standing by itself, without his qualifications, because the other three candidates' pictures and qualifications were listed, as I recall.

Q All right. Let me hand you Defendants' Exhibit Number 53, which was put out by George Bush and has pictures on it, of him and Black people and see if you think that has a racial tone?

A I think there is some language in here that could be construed that way, yes, sir, where it

says that 55 percent of the total Black vote polled in Virginia went to Holton, who was the Republican candidate, and it changed the State. I think Mr. Bush or whoever put this out for Mr. Bush was making a direct appeal to the Black voters to vote for Mr. Bush for the United States Senate.

Q Senator, you mean if a person makes an appeal to the Black voters to vote for him, that therefore it has a racial tone to it?

A I think what was sought to be done, in my opinion, by this flyer, was to influence Black voters to not vote the straight Democratic ticket; to vote for this man. It says, "Vote for the man -- not for the party. Don't vote the straight ticket." And it is a fact in Dallas County, Texas, in the Black precincts, in every general election, the Democratic nominees do very well. Anywhere from 90 to 100 percent of the vote, as you and I know.

Q Yes, sir. And we appreciate it, don't we?

A We sure do.

Q Well, the fact that someone solicits Black votes -- you solicit Black votes, don't you?

A Yes, sir. I solicit votes from everyone

in my district.

Q And that doesn't mean it has a racial tone to it, does it?

A No, sir.

Q But you think it does for Mr. Bush?

A I say it has language in here that could be construed to be that kind of appeal, yes, sir.

Q All right, sir. Senator, of course, sometimes one's supporters in politics, with their energy and interest which we always try to get in politics, do things that the candidate does not always approve of and doesn't always control? Isn't that correct?

A Yes, sir, that happens many times. The candidate doesn't even know about it.

Q As a matter of fact, isn't it true that in your own election, in 1966, that somebody sent out a precinct -- a letter signed by a then precinct chairman named Thomas L. McKinney and he later denied that he sent it out, and to refresh your memory, let me hand you this Defendant's Exhibit Number 6, being the letter, and Defendant's Exhibit Number 7, the Times-Herald in regard to it.

A Yes, sir.

Q Now, although that went out all over

your district, Senator, you had no way to keep whoever it was from sending it out, did you?

A Well, in this particular instance, it went only to one precinct, I believe. It was precinct 426 at that time.

Q Yes, sir.

A I was told that it was going to be mailed out and that Mr. McKinney had authorized it, yes, sir. Mr. Jones and Mr. McKinney both told me no one had authorized it before it was mailed.

Q Now, in 1966, what was the date of the Democratic primary, if you remember, approximately?

A May 2nd, I believe.

Q May 2nd?

A I think so.

BY MR. LUNA:

Q On May 2nd, 1966, wasn't there again in your race sent out by somebody a telegram urging people to vote for you and purportedly signed by Barbara Jordan, State Senator, J. Lockridge, Dallas, and Ralph W. Yarborough?

A There was a facsimile of a telegram sent out, I believe, in the runoff, Mr. Luna, not in the first primary.

Q In the runoff?

A I believe that is correct, yes, sir.

Q May 21st?

A June 6th, I believe, was the date of the runoff.

Q Let me ask you to examine -- first, before I ask you that -- Joe Lockridge was then a black member of the Legislature, was he not?

A He had won the Democratic nomination in the first primary. He had not yet been elected. He had a Republican opponent.

Q I hand you Defendants' Exhibit No. 4, Defendants' Exhibit No. 5, and ask you to tell us whether or not No. 4 is a copy of that telegram without the address of the person to whom it was sent being on it, and

deleting what has been written in there on pen, and if No. 5 is the news article following it that correctly portrays the position of Mr. Lockridge.

(REPORTER'S NOTE: Witness examines exhibit.)

A Yes, this is a reproduction of the telegram that was mailed in some precincts, and this is a reproduction of a story that appeared in the Dallas News on June 10.

Q Now, the J. Lockridge, as explained in the news article, was somebody else other than Joe, wasn't it?

A Yes, sir.

Q Wouldn't you think it was reasonable to assume that whoever sent out that telegram intended for recipients to believe that Joe Lockridge, the very popular black nominee of the Democratic Party, was endorsing your candidacy?

A I really don't know that I can answer that question as to what someone else's mental process was. I think like all other campaign material whoever did it did it for the purpose of trying to influence voters favorably.

Q Yes, and again, of course, whoever sent it out, there was no way that you could know they were going to send it out?

A No, sir.

Q Senator, directing your attention to the Plaintiffs' Exhibit No. 94, and it is the letter that is at the heading -- Ruth Jefferson -- may I show you a copy of it---?

A Yes.

Q ---and I will look at a copy at the same time.

(REPORTER'S NOTE: Witness examines exhibit.)

Q I believe earlier you identified that letter as being sent by the DCRG?

A Yes, sir.

Q Now, DCRG does not in any way purport to have sent that letter inasmuch as it is not on its letterhead, not sent by any officer of the organization, is it?

A That is correct. It was in an envelope that contained other DCRG material, including the slate card.

Q And, Senator, isn't it a fact that the first

name on there is Carrie E. Welch, who is a former City Councilman, and never belonged to the DCRG in his life. Isn't that true?

A He is a former City Councilman. I don't know whether Mr. Welch belongs to the DCRG or not.

Q You have never known Mr. Welch to belong to the DCRG, have you, sir?

A No, sir, I haven't.

Q How about Mr. Henry Grupe?

REPORTER: Henry who?

MR. LUNA: Henry Grupe, Jr., G-r-u-p-e.

A No, sir, I think that is Dr. Henry Grupe, a dentist in DeSoto, and I don't know whether he belongs or not.

Q Mr. D. A. Kimmey is a banker from Cedar Hill, is he not?

A Yes, sir.

Q And you have never known him to be a member of the DCRG, have you?

A No, sir.

Q How about Mr. Gordon Yeargan?

A Mr. Yeargan is the President of an insurance company. I don't know whether he belongs or not. I have never seen the membership list.

Q You have never known Mr. Gordon Yaaryan either to be a member of the DCRG, have you, Senator?

A No, sir, never have.

Q. Has the DCRG ever endorsed your candidacy?

A Not as far as I know.

Q Well, then, would it be fair to say that since these folks opposed you, as do the DCRG, you therefore assume that those who oppose you belong to the DCRG?

A No, sir, there are some people in DCRG who may support me, and there are some people who oppose me who are not in DCRG, I'm certain.

Q Yes, sir.

A I don't think they are mutually exclusive, is what I am trying to say.

Q Now, that comes down to my question, Senator.

We have an active and energetic primary in Dallas County, don't we?

A Yes, sir.

Q And then after that primary is over in most all cases, including yours, those members of the DCRG in very large numbers who -- that is, the ones who may have opposed you, helped elect you in November, didn't they?

A As far as I know.

MR. LUNA: That's all, Senator. Thank you.

JUDGE GOLDBERG: Any other questions?

MR. GEE: Very quickly, Your Honor, and I appreciate the Court allowing me the opportunity -- Tom Gee.

CROSS-EXAMINATION

BY MR. GEE:

Q Senator, I wanted to ask you sort of the range of questions which I asked the two expert witnesses. I think you are qualified as an expert on Dallas politics.

Would you say that it is more expensive to run a legislative campaign in the multimember districting situation than it would be in a single member district situation?

A For a legislative seat?

Q Yes, sir.

A Yes, I do think it would be more expensive.

Q And the reasons for that would be fairly obvious, a larger number of people to contact?

A A larger number of voters. Media becomes more important -- television, radio, newspaper, that you don't necessarily need in the district race that you would need in a county race.

Q How about accountability, the accountability upwards and downwards, for the representatives, sir? Do you feel that it is better, worse or harder to establish in the multimember situation?

A I feel that the representative is closest to the people if it is a single member district, because I think he is more in tune with what their needs are.

Q Do you feel, sir, in view of the greater expense in campaigning for the multimember district that this places a premium on those who are able to contribute heavily to the candidate's campaign?

A Yes, I do.

Q In your opinion, sir -- well, I will ask you this. Are you generally familiar with Harris County?

A I was born and raised in Harris County, but I haven't lived there since 1943 when I joined the Navy.

Q Well, I will ask you this question and you can tell me whether you can answer it or not.

Are you aware of any geographical or population or other distinguishing features, other than political

advantage to be gained, which would cause Dallas to be multimembered and Harris County to be single membered?

A I know of no reason for the distinction, other than political.

Q Is there in your judgment an identifiable Republican area in Dallas County in the sense in which we have been using the term, Senator?

A Yes, sir, there certainly is.

Q And it is up there in the north lying across the north of the town?

A Basically, County Commissioners Precinct No. 1 in Dallas County.

Q It votes that way over and over again?

A It has been doing it every general election since 1952 to my certain knowledge, yes, sir.

Q This voting machine that you can't get all the Democratic legislative candidates on, is that a standard type voting machine?

A Yes, it is the A.V.M. machine, American Voting Machine. It has got, as I recall -- I used to be an Election Judge, Precinct Chairman. As I remember there are 58 or 60 places across for races, and by the time you had all the state-wide races, county-wide races and all, there is not room enough on the ballot, which I think is

indicated by an exhibit which is in evidence.

Q A machine produced for general use?

A Yes, sir.

MR. GEE: Thank you very much, Senator.

MR. LUNA: Please the Court, I thought the Plaintiffs were through.

MR. EASON: I have just a few questions, Your Honor -- Nathan Eason.

CROSS-EXAMINATION

BY MR. EASON:

Q Senator, I realize, of course, your expertise is associated with Dallas County, but having been in politics like you have and in answering these general questions, would you say that the cost of a single member legislative race in Bexar County would be more in a multimember district than it would in a single member district?

A Yes, I think the larger the area, the more the cost.

Q Do you know whether or not Bexar County has an identifiable Republican area?

A No, sir, I'm sorry, I don't.

Q Do you feel the accountability of the constituents or the candidate, the legislator, to his constituents, taking into consideration his familiarity with the local problems and so forth, is greater or better in a single member district in Bexar County than in a multimember district?

A I would think the accountability of the representative would be greater in any metropolitan county in Texas under a single member district plan than it would be under an at-large plan.

Q Yes, sir, and also using the objective criteria such as -- well, do you know of any reason, any practical, logical or objective reason why Harris County would be awarded single member districts and Bexar awarded multimember districts?

A No, sir, I don't.

MR. EASON: Thank you, sir.

JUDGE GOLDBERG: Anyone else have any further questions?

MR. LUNA: These brought up a couple more questions that we would like to ask, if we might, Your Honor.

CROSS-EXAMINATION

BY MR. LUNA:

Q Senator, in regard to the voting machines, single member districts is not going to (a) make any more room on the voting machines or (b) reduce the number of names or offices on the ballot in Dallas County, would it?

A Yes, sir, it will reduce it by 14 this year and 17 next year, because you only have one State Representative on each machine, like you only have one State Senator, rather than 15, as we had last year, or 18 as we will have this year, if the at-large system prevails.

Q Oh, you're talking about in that particular area?

A In any area.

Q All right.

A In any precinct, any voting machine.

Q All right. Now, what happens on the voting machine is that there has got to be more than one line in any event, hasn't there, across the voting machine?

A I'm sorry. I don't remember exactly how many places there are, but at one time, I know, if we had had single member districts in Dallas County, we could have

had everything across the top without having to go to the second line down below. I don't know whether that is still true or not.

Q I see. Now, you mentioned cost. You ran in an area that covers less than a third of the county population. Is that right?

A Yes, sir.

Q Would it be fair to say that you spent more than $40,000.00 in your senatorial district race in Dallas County to be elected to the Legislature as a Senator?

A Yes, sir, if you add the primary, the runoff and the general election. I went through three contested elections.

Q Do you know of any member of the House of Representatives or candidate therefor with the possible exception of Mr. Agnich, if he is an exception, whoever spent that much county-wide?

A Yes, sir.

Q You do?

A Yes, sir, I have seen evidence that indicated to me that they spent more than that.

Q Are you aware that the expense accounts that are sworn under oath by the candidates in the County Clerk's Office do not reflect that?

A I have examined exhibits, and that is correct. What I have reference to is that their supporters or someone was spending money on them for television and things of that kind that cost a lot of money.

Q Of course, you are aware that the expense account statute, which you helped pass, requires them to report it, whether they spent it or somebody else spent it?

A Yes, sir, I had reference to before I was elected to the Legislature.

Q Yes, sir, but in 1970 those expense accounts that are filed in the County Clerk's Office in accordance with the statute you helped pass, they are required to report what was spent in their campaign, whether they spent it or someone spent it for them, wasn't it?

A I believe that is correct, yes, sir.

Q And there is not a one that reflects that they spent as much in a county-wide race as you spent in less than a third of the county, is there?

A Well, again, the exhibit will speak for itself. I haven't examined it from that viewpoint.

Q Senator, you mentioned that there was an identifiable Republican area in Dallas County. By that do you mean, as another witness said, that a Republican area is an area where they voted for President on the Republican

ticket in November?

A No, sir, I mean an identifiable area where every Republican candidate for every office got more votes than his Democratic opponent did in the general election in which he ran.

Q What areas did the Republican candidate for Governor get more votes than the Democratic candidate for Governor when John Connally was on the ticket?

A The northwest part of Dallas County.

Q Very few precincts, wasn't it?

A I will have to look at the record to see, but, as I recall, it was surprising to me how many Mr. Creighton carried against Mr. Connally.

Q So then, it depends on the race how they vote, doesn't it?

A No, sir, there are areas in precincts that every election every Republican nominee gets the majority over his Democratic opponent, regardless of how the county or the state turns out.

Q Now, those people in that area vote in 75 to 100 races in that area, don't they?

A I don't know how many---. You mean contested races?

Q Yes, sir.

A It would vary, of course, from one year to the other. I would say---.

Q More than 50 races?

A Not contested races in November. I don't ever remember having that many.

Q You are aware that last year Curtis Graves, one of the Plaintiffs in this case, in the last election headed up a state-wide campaign to elect certain state-wide Republicans, are you not?

A Yes, sir.

Q And for whom was he campaigning?

A As I recall, for the Republican nominee for Governor and for United States Senator, Mr. Eggers and Mr. Bush, if I remember correctly.

Q You don't say because of that, that he is a Republican, do you?

A I don't know what -- I know Curtis Graves. You would have to ask him. I assume he is a Democrat. He runs in the Democratic Primary, takes the same oath I do.

Q Yes. So then, those people in Dallas County who went to the Democratic Primary went there under a statute that you helped pass in 1967 that told how you select your party, didn't it?

A Yes, sir.

Q And that statute provides that one selects his party for that year by voting in a party primary and having his voter registration certificate so stamped?

A Yes, sir.

Q Now, are there any precincts in Dallas County where more folks join the Republican Party each election by voting in their party primary than join the Democratic Party by voting in its primary under the statute which you passed?

A Not in my senatorial district. There may be some in North Dallas, but if so, I am not aware of it.

(No omission here.)

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Questions by Mr. Luna:

Q Using that yardstick and the statutes that you helped put through the legislature, is there any identifiable Republican area in Dallas County of sufficient size to compose a single-member district of the legislature?

A Yes, sir. There certainly is, because the fact of the matter is there has never been a majority of qualified voters in the county voting in two primaries put together.

Q All right.

A The majority of the people don't participate in the primary but they do vote in November.

Q So, they are independents, aren't they?

A They are Republican when they vote in November for Republican candidates, as far as I am concerned.

Q But, under the law you passed, the only way you can be a Republican is going and voting in the Republican primary, isn't it?

A No, sir.

Q Isn't that what you passed?

A There is a section in the election code that I am familiar with; I know what you are referring to.

But, there are other ways a person can become a Republican.

Q Under Texas law, sir?

A Yes, sir, because I know of instances where people voted in the Republican primary and then the Democratic runoff in Dallas County. Do you remember? I called them to your attention and tried to get the Grand Jury to indict them.

Q You are talking about some act somebody did illegally.

A So, in that instance that individual voter would be a member of both the Republican and Democratic parties.

Q So, there is no way, so far as you know, for anybody to become a member of the Republican Party or the Democratic Party without voting in its primary?

A Yes, sir. A person can become a member of the Democratic Party-- and I can't speak for the Republican Party-- by saying he wants to be a Democrat and work for us and with our candidates-- as far as I am concerned.

Q As far as you are concerned. But, how about the statute you voted for and helped pass?

A But you see, Mr. Luna, the problem I have with your question is it is now possible to register after

the primaries are over and before the general election. Those people have a right to vote and they have a right to identify themselves--

Q Yes.

A --with a political party.

Q Yes. So, then, actually in Texas and in Dallas County if one is an independent and doesn't go to any primary the only choice he has, if there are no write-in candidates and no independents filed, is to vote for either the Republican candidate or the Democratic candidate in the various races, isn't it?

A Yes.

Q So, we wind up in North Dallas with a lot of ticket splitters.

A And we have got a lot of people that vote the straight Republican ticket, the majority, in Commissioner's Precinct 1.

Q In the precinct elections.

MR. LUNA: Thank you, Senator. I will not belabor it any longer.

JUDGE GOLDBERG: Are there any questions of Senator Mauzy?

MR. CURRY: No, sir.

JUDGE GOLDBERG: I have got some.

MR. RICHARDS: I want to clear up one exhibit, Your Honor.

JUDGE GOLDBERG: Judge Justice has a few, but we will let the lawyers exhaust themselves first.

REDIRECT EXAMINATION

Questions by Mr. Richards:

Q Senator, I simply want to clear up the exhibit to which you have been referring that had the photographs of Mr. Basheare and Mr. Stahr-- and we must have misplaced it. Is it Plaintiffs' Exhibit Number 5 and the attachment to it that appears in the George Bock deposition; is that the picture?

A Yes. I have reference to the picture attached to it, not-- The individual letter that I received was not this one signed by Mr. Webster and Mr. Smith; it was signed by someone else.

Q But, you received a similar letter.

A A similar letter. And, this--

Q By "this" you mean the matter headed "Democratic Committee for Responsible Government. Which pair do you want to represent you in Austin?"

A Yes.

Redirect Examination - Mauzy

Q And, that is an attachment to Plaintiffs' Exhibit Number 5 in the Bock deposition?

A Yes.

Q Now, that is the document you referred to?

A Yes, sir.

MR. RICHARDS: That is all. Thank you, Your Honor.

QUESTIONS BY JUDGE JUSTICE:

Q Senator Mauzy, there has been a number of references to the Dallas Committee for Responsible Government, DCRG. And, since you have testified that they consistently opposed you, I assume that you don't have-- you are not privy to all of the information regarding the organization. But, can you tell the Court generally how this committee is constituted and whom it represents, if you know?

A Judge Justice, I was a member of the Democratic Executive Committee myself from 1962 to 1966 as a precinct chairman, and it was during that period of time that the DCRG was formed by a group of individuals who were precinct chairmen of the Dallas County Democratic Executive Committee. Since then I have not had personal contact with it except through the mailings that they put

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out and press releases and things of that kind. As I understand it, they are a group of individual citizens, some of whom are Democratic Party office holders and some of whom are not, who seek to influence the nomination of candidates for the Democratic Party, for nominees for state representatives in Dallas County and who seek to influence the elections of individual precinct chairmen, and in some instances seek to influence the nomination of other Democratic nominees for public office in Dallas County.

JUDGE JUSTICE: I have no further questions.

QUESTIONS BY JUDGE GOLDBERG:

Q Senator Mauzy, you appeared before the Legislative Redistricting Board, did you not?

A Yes, sir.

Q You contended before that board, I assume, that Dallas should have a single-member district?

A Yes, I did, Your Honor.

Q Did you suggest to the Board what the criteria should be in carving out the senatorial districts?

A Yes, I did.

Q Please enumerate them?

A I asked the Board to follow what I feel the law requires, as the Supreme Court and other Courts

have interpreted the Constitution. Number one, that the district be equal in population; number two, that they be as compact and contiguous as possible and number three, that wherever possible the economic interest be recognized and represented.

Q Did you feel that the third criteria, from that you know as a senator, was satisfied in the Harris County district?

A Your Honor, I have not looked at where the lines are in the Harris County House redistricting, but it seems to me in any urban county in Texas if you divide the county into districts of equal population that criteria will be satisfied unless there is gross gerrymandering-- which I cannot conceive of in the case of Dallas County because, as Your Honor knows, Dallas County is the most densely populated county in Texas and it would be very difficult to gerrymander.

JUDGE WOOD: What about senatorial districts in Harris County?

A I am sorry, sir, I am not familiar with those lines either, Your Honor.

JUDGE WOOD: Would your reasoning be the same with reference to senatorial districts and large municipal communities the size of Harris County-- that it would be almost impossible to

gerrymander?

A It would be approximately five times easier in senatorial districts because you have got approximately five times as many people; there being one hundred fifty members in the House and thirty-one members in the Senate.

BY JUDGE GOLDBERG:

Q You do recognize, do you not, Senator, that there are communities of interest that cut across whole county lines?

A Yes, sir, I certainly do.

Q You also say here today that there are issues which divide themselves into less than county line interest?

A Yes.

Q And, do you think it is a legitimate legislative chore to decide that one community of interest should be the determinant in one area and not in the other or must they be the same in all areas of Texas?

A If I understand your question correctly, Judge Goldberg, and I am not sure I do.

Q Well, I think you do.

A I am not sure. I think that a person can represent the community of interest from which he is

elected although there might be conflict within it. There is always differences of opinion with issues. I do think there is a difference, for example, between a south Texas senator representing a largely rural area, totally rural ranching area, and the senatorial district I represent on economic matters, on matters of taxation, on matters of public education, on matters of public transportation. I think that there are those kind of differences that do exist because of the area-- if I understood the question correctly, Judge Goldberg. 38s

JUDGE GOLDBERG: Thank you very much.

JUDGE JUSTICE: Is there anything further?

JUDGE GOLDBERG: Anything else?

MR. IRVIN: At this time we would like to call Dr. Conrad, Dr. Emmit Conrad.

JUDGE GOLDBERG: Identify yourself for the record, please, sir.

MR. IRVIN: Walter Irvin. May it please the Court, I am Walter Irvin and I represent Plaintiffs' Intervenors Washington Et Al in the Tyler case.

EMMIT CONRAD,

a witness called by the Plaintiff, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the

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truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Irvin:

Q Would you state your name, please?

A Emmit Conrad.

Q And, your address?

A It is 2003 Lamark Street, Dallas.

Q And, how long have you lived at that address?

A For sixteen years.

Q For sixteen years?

A Not at that address. I lived at that address about eleven years.

Q And, prior to that?

A I lived on Rose Lane five years.

Q And, is it fair to say, then, that you have been in Dallas Texas sixteen years?

A Roughly sixteen years.

Q What is your occupation?

A I am a surgeon.

Q And, where is your office?

A On South Oakland, 4432 South Oakland.

Q And, what race of people live on Oakland?

A In the segment where my office is?

Q Yes.

A Almost entirely Black.

Q Dr. Conrad, do you hold any other positions in Dallas other than a surgeon, practicing surgeon? Are you elected to any public office?

A I am elected to the Dallas Independent School District, Place 5, Board of Trustees.

Q And, sir, when were you elected to that office?

A In 1967. May 1st, I think it was, 1967.

Q Did you run as a part of a slate when you sought that office-- did you identify yourself with any particular party in your quest for that?

A Not party, but a slate called Lead. Lead for Advancement in Education for Dallas.

Q Were you the only Black person running on the Lead slate?

A Yes, the first one.

Q Now, you testified that you ran in May, on May 7, 1967?

A No. I ran April 1st. My election was the 1st day of May on a Monday.

Q In 1967?

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A Yes.

Q Prior to 1967 did you have any knowledge of any other Blacks seeking-- and being successful-- a seat on the Dallas Independent School Board?

A I knew of none that was successful. I knew of several who had attempted to do it.

Q Are you familiar with a Dr. Hunter?

A Powell?

Q Dr. Hunter.

A Dr. Hunter?

Q Yes.

A Yes.

Q Isn't it a fact that he sought the election--

A Yes. Dr. Hunter had sought a seat the previous year. In fact, I had aided in his campaign. And, he ran without the endorsement of a slate, as an independent. I think the Lead group identified him as being intimately qualified.

Q Was Lead in existence in 1966?

A I think so.

Q And, did they seek to support-- I mean, did Dr. Hunter seek the support of the Lead slate?

A As I recall, he sought everybody's support and the Lead slate came out qualifying-- as his being

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qualified-- but no particular endorsement. I think his opponent was Jerry Wheat.

Q Was he Wheat?

A Yes.

Q Now, Dr. Conrad, in 1967 did any other Black run for the School Board, either on the Lead slate or any other slate?

A To my knowledge-- In 1967 or before 1967?

Q In 1967.

A Not to my knowledge. No, he was the only one.

Q Isn't it a fact that a Dr.-- that Dr.-- that a Mr. Joe Kervin also, sometime prior to the new School Board election, served in the capacity as a member of the Dallas Independent School District?

A Mr. Kervin was appointed to the School Board to fill a vacancy of Mr. Wheat. And, this must have been September or October of 1970.

Q And, is he now a member of the Board?

A No, he is not.

Q Did he run for re-election?

A Yes, he did. He ran in April of this year-- of '71-- the last election.

Q Did he run as a member of the Lead slate?

A Yes, he did.

Q Could you explain to the Court why he lost-- in your opinion why he lost?

A Well, there was several reasons, I felt. He lost the Black vote-- the Black vote was split because we had a second Black candidate, a Mrs. Gillam, who was also intimately qualified as Mr. Kervin. The feeling in the community was that this represented a backlash in the city-- in the Independent School District-- because two Blacks were on the Board.

Q Let's --

A I have no figures, you know, why someone won or lost.

Q Did you carry the Black vote?

A Yes, I did.

Q Are you telling us, then, that the Lead slate, in effect, lost the election?

A Yes, the whole slate lost. The Black vote was split.

Q Except you?

A No, I wasn't in that last election.

Q Okay. Now, Dr. Hunter that you alluded to as having run for election in '66, what does Dr. Hunter --

A Dr. Hunter is a minister, as well as a sociologist. He was an instructor out at Bishop College, and I think he is part-time out there now. And, he is part-time for the school district now, I understand. He is also a minister in the Presbyterian Church.

Q Okay. Now, about Mr. Kervin, do you know anything about his qualifications?

A Mr. Kervin had previously filed in the State Legislature under the Republican ticket some two years prior -- it must have been 1968. He was a college graduate, a businessman, formerly had been

president of the Dallas Negro Chamber of Commerce and he is engaged in several businesses, office supply company and janitorial services in Dallas.

Q How, is the Dallas Independent School District confined, let's say, to the corporate limits of Dallas?

A No.

Q Does it go out into some of the satellite communities, including Dallas County?

A The smaller segment -- The district lines are not contiguous with any other particular governmental unit. Parts of Garland, I think, is in the district line, a part of Farmer's Branch is in the district line, a part of, oh, -- Seagoville, for instance, is in it, and on the other side of the scale -- that is, the other part of Dallas, that is in other district lines.

Q Are you familiar with the City within Dallas called Highland Park and University Park?

A Yes, I am familiar with it.

Q Does the Dallas Independent School District go around it?

A Yes. That is an island, both as a school district and as a municipality.

Q Now, you have stated, Dr. Conrad, that

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you ran for the school board and was successful in 1967. At the time that you ran, what issues did you -- let's back up a minute. Strike that. What prompted you to seek the School Board on the Dallas Independent --

A Well, the previous year I had been involved with trying to help Dr. Hunter get elected, and we ran into all kinds of problems. The one first being able to finance a district-wide campaign, particularly on the resources from the Black community. The second thing was a great concern for the condition of the schools in the Black community, the lack of adequate free lunch programs, the lack of quality educational programs that would suit the prior community -- particularly in the area of compensatory education. For instance, we did not have an honor program at any Black school that year. We had some 2,000 kids on the lunch program, which was inadequately financed, and many of them were rotating. In other words, if they were five kids in a family, they were deemed economically deprived, and some weeks two of them were on and then the next week three would be on, and I don't know what happened to the two that would not be on that particular week. This is the sort of thing --

So, I became involved with Dr. Hunter's campaign, and then I joined local organization and was placed on the Board.

Q Did you seek Lead support?

A No. I was part of a committee that was sent out to seek candidates from the Place 5 area.

Q Place 5. Would you identify that?

A That is the south Oak Cliff area, generally. It is an area that was rapidly changing from an all-white community to an all-Black community, and, I was part of a five-man committee, and we could not find anybody that, number one, who was willing to offer themself to run; number two, that we thought had qualifications. So, on that particular Sunday, the day before the filing, it ended up on my doorstep, and the committee asked that either my wife run or that I would run.

Q Dr. Hunter, would you tell us whether this committee was composed -- was it biracial?

A No, it was all Black.

Q All Black?

A Because it was for Place 5.

Q Now, you were elected in 1967 again. Now, what was the status of the job related -- in the job related activity in the administrative arm of the school district, that is --

A One of the things we had noted was that there were only token representation at the

administrative level in the school district. For instance, segregation was in the forefront. All the Black visiting teachers had offices that were from the administration building, whereas, all the whites had offices in the administration building. There were no Black secretaries in the administration building. For instance, and things like this. Nobody passed the level of --

Q Were there any Blacks in the higher echelon --

A No.

Q -- of the administration?

A No.

MR. LUNA: If it please the Court, we don't think we should try the school case here. Some of us weren't in that case.

JUDGE GOLDBERG: Mr. Irvin, this is all very interesting, but what do you want to prove? What relevance will all of this have to the case before us?

MR. IRVIN: I think it is very relevant, Your Honor, inasmuch as Dr. Conrad is one of three elected officials in Dallas, elected officials -- that is, who has a concern for the community. He

lives in this community, and we are attempting to show -- and we will show -- that he has to run on the slate, he has to be identified with some other group outside the Black area that was identified this morning by Mr. Meiser. He has to go outside and gather support and the problems of the nature and complexity of the problems are the same problems that tells about Dallas. That is, that Dr. McClesky testified about --

JUDGE GOLDBERG: Go ahead.

MR. IRVIN: I will be through with this line of questioning in a minute.

Q Where is your office, Dr. Conrad?

A 4439 South Oakland.

Q And where do you live?

A On Lamark, 203 Lamark.

Q And approximately in distance, is that your place of business and your place of residence, is that in the Black community?

A Yes.

Q To and from work, is this area, or corridor completely Black?

A Just about.

Q Have you, in your 16 years in living and working in Dallas, noticed any appreciable change in the nature of let's say, the streets from Lamark Street, Cedar Crest Street, to Oakland Street -- in that area?

A Yes. In my opinion, the maintenance of these streets have deteriorated rapidly since the area has been integrated.

Q In your opinion are they -- what did you notice about the nature of the services there -- that is, in terms of transportation, garbage collection, -- do you, in the Oakland or Lamark or Cedar Crest area notice any changes in that area?

A I feel there has been a general

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deterioration, for instance, on Cedar Crest, it has been filled with potholes for the past four or five years, with very little maintenance.

Q As a doctor, you do treat quite a number of Black patients?

A 99 percent of my practice is Black.

Q And do you have any observations as a doctor, as to the quality of the health services that your clients or patients receive, or how they appear to you as a physician?

A Well, one of the problems that -- in the community is proper health facilities. This is one of the great concerns of the people in the community -- adequate health care within the area.

Q Are you familiar with the long history -- well, strike that question. Now, Doctor, you have lived in Dallas some 16 years. Isn't that true? And do you feel that in your opinion, as a Black elected official do you feel that Dallas, the City of Dallas, or the County, that is, do you feel that -- for instance, you could pull up stakes and move to Richardson, let's say, and commence practice in your profession out there and live as comfortable as you are now?

A Begin practicing out there? Well, my

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practice has always been 99 percent Black. I don't have any way of really forecasting what would happen if I moved out there. I am really unable to answer that in that manner.

MR. IRVIN: That is all of the questions I have. I pass the witness.

JUDGE JUSTICE: Are there any questions from any of the Plaintiffs' attorneys?

MR. COLLINS: Yes, Your Honor, if the Court please. My name is John Collins.

CROSS EXAMINATION

QUESTIONS BY MR. COLLINS:

Q Dr. Conrad, I believe you told us you lived there in Dallas for 16 years. Based on your observation during that period of time, can you tell the Court whether or not the hostility of the white majority in Dallas that has manifested itself in the schools and churches and houses and in State statutes, whether or not this hostility has been totally eliminated up to the present time?

A No. This hostility has not been totally eliminated.

Q Can you describe for the Court some ways in which you see this as a Black citizen in Dallas County?

A Well, in my opinion, one of the -- well, one thing that happened when I was first running, one of the newspapers stated that if and when a Black was elected to the School Board, the white community would pick the Black and the place and the time. This happened during my run-off campaign.

Q What year was that, please, sir?

A '67. In my opinion, the great outburst of 1971, the so-called anti-bussing demonstrations was a situation of racism for indeed out of the thousands of people that demonstrated down at the School Board, none of them were really concerned about the five or six thousand Black kids were really being bussed. We run into it all -- all over and in covert forms, different forms, prejudice.

Q Dr. Conrad, I assume that you are familiar with most of the members of the Dallas County Legislative delegation?

A I know most of them, yes.

Q All right. Do you have an opinion as to whether or not that delegation is responsive to the needs of the Black citizens in Dallas County?

A Most definitely not. I feel as though that many of them are not responsive at all to the Black community or to the economic deprived; not necessarily the Black community.

Q I assume, too, Doctor, that in your 16 years in Dallas County, you have had an opportunity to observe Legislative races there in the County, have you not?

A Yes.

Q Let me ask you this question, Dr. Conrad, do you have an opinion as to whether or not an independent Black candidate, running county-wide in Dallas County, independent of the D.C.R.C. slate, could be elected today in Dallas County?

A It all depends upon circumstances. In a general election, I would say no.

Q All right. Now, what about in the primary? Could an independent candidate be elected in the primary?

A In the primaries, I would say no. The special occasion I have reference to, in run-offs, there

is always the chance that the majority will go to sleep on the job or for fulfilling unexpired terms, or this sort of thing. A great opportunity because the interest is there.

JUDGE WOOD: Doctor, without the support of that slate, which is apparently very powerful, could a white be elected?

A I doubt that.

JUDGE WOOD: All right.

MR. COLLINS: Pass the witness, Your Honor.

JUDGE GOLDBERG: Any further questions? Do you have any questions, Mr. Luna?

MR. LUNA: Yes, sir.

CROSS EXAMINATION

QUESTIONS BY MR. LUNA:

Q Dr. Conrad, you mentioned Joe Kirving. Now, he was and is a very popular Black in the entire County, is he not, and was at the time he ran for the Legislature?

A Well, we would have to limit that to popularity in definite areas.

Q Well, let me ask you exactly, in your opinion, based on your observation and politics, the only reason Joe Kirving was not elected is because he was running on the Republican ticket, instead of the Democratic ticket, wasn't it?

A Yes.

Q Dr. Conrad --

A -- now, this is for Legislature and not School Board.

Q Yes, sir. For the Legislature, that is my question. His being defeated, in other words, had to do with party and not race; party affiliation and not race?

A That is putting it very simply and it was not quite that simple. If you remember, that was the year of Nixon's administration and most Blacks voted against Nixon in Dallas County.

Q Well, most Blacks from Dallas County always voted against Republicans? Is that right, Doctor Conrad?

A I am not sure about that. I am not that knowledgeable about previous elections.

Q Clay Smothers was a Black, too, wasn't he, Dr. Conrad?

A Yes.

Q And he, too, was defeated for the Legislature last general election, was he not, sir?

A Yes, sir.

Q But he also was on the Republican ticket, was he not?

A But I don't think his defeat was tied particularly to the fact he was a Republican, but for some other reasons that you well know.

Q So, in other words, simply because a man is Black doesn't mean that the Black community is going to vote for him, whether it is a single member district, or multi-member district?

A That's correct.

Q It is on qualifications and what they feel is effective representation? Is that correct?

A That's correct.

Q Dr. Conrad, would you agree that Senator Oscar Mauzy, although he is white, has adequately and effectively represented all interests of Dallas County in his district, including the majority of the Black voters?

A I think you could say he has been a good Senator.

Q Dr. Conrad, you mentioned health care. Is health care and prevention of disease something that is a community of interest for everybody in Dallas County, regardless of race, creed, color, or national origin?

A It should be.

Q And they all need to work together on it?

A Yes.

Q You told us you ran for the School Board?

A Yes, sir.

Q You ran at large?

A Yes, I did.

Q Did the Black community pick you originally to run?

A Well, a small committee of which I was a member.

Q Which was a representative of the Black community?

A I am not so sure of that. It was a representative of the people at that time who were

interested in getting somebody on the School Board who would reflect the interest and concern of the Black community.

Q Now, I asked you that question to come down to the way the political system works and directing your attention to the legislative slate, isn't it a fact that you were one of several Black people who chose Zan Holmes to run for the Legislature at the time he was chosen?

A That's right.

Q And any time anybody is chosen to go on a ticket, don't all knowledgeable political people go to the community from whence he comes to ask them for their advice and recommendation in putting that ticket together?

A He was not on the ticket when we selected him. He was elected for an unexpired term and then placed on the ticket.

Q But they are never placed on anybody's ticket until they get the local support, are they, Dr. Conrad?

A I am not sure about that. The reason I am not sure is because there have been many members placed on that Legislative ticket that certainly didn't

have the generalized support of the Black community.

Q Although it happened when you first moved to Dallas, you are familiar with the selection process of Joe Lockridge that he was selected by a similar group as Zan Holmes was?

A I was told that there was a meeting. Now, other than that, I am not aware of all of the details.

Q Yes, sir. Dr. Conrad, I am going to hand you what has been marked for identification purposes please, sir, as Defendant's Exhibit D-55. What is that D-55, please, sir?

A It is a facimile of a telegram.

Q And who sent the telegram?

A It was sent out over my name through a public relations firm, I think. Now, that has been quite a while ago.

Q Yes, sir, but it bears your signature?

A That's right.

Q With, of course, your authority?

A That's right.

Q Now, that signature, that telegram was soliciting support for particular candidates, was it

not?

A That's correct.

Q Who were they?

A Senator Ralph Yarborough, Representative Zan Holmes, Senator Oscar Mauny and Barlin Brashear.

Q Was it sent predominantly to the Black community?

A Yes, we did. We attempted to limit it to the Black communit.

Q Now, the fact that you sent it only to the Black community had no racist -- racial tones to it, but simply in that area where your influence was heaviest, wasn't it?

A Well, moreso than that. One of the things we didn't want to do was stir up what we call a backlash, either.

Q The fact that a person sends a piece of literature to the white community or to the Black community is for what in their judgement might be the best political effect, rather than for some racial reason, isn't it?

A It depends on how you determine that racial -- well, for instance, this telegram was sent

primarily to the Black community because in past instances, the white community would get upset when they would see something like that and they would immediately tag that man as "an arch liberal; he is a friend of the Blacks".

Q But we have gotten to the point with our racial relations in Dallas County, Dr. Conrad, so that any knowledgeable politician would not only appreciate, but would actively solicit your endorsement in any community, wouldn't he?

A Let me go back. When you say "any politician would actively --" I doubt it.

Q Anybody who wants to get elected in Dallas County would be very proud to have your endorsement, wouldn't he?

A I hope so.

BY MR. LUNA:

Q You don't know of any politician, black or white, in Dallas County who has ever said they didn't want your endorsement, have you?

A Well, very few politicians turn down any endorsement.

(LAUGHTER)

Q Dr. Conrad, I want to direct your attention, if we may, please, sir, to a community in the southern part of Dallas County that had a problem with an elevated highway a year or two ago.

Do you recall?

A Yes, I do, Spence community.

REPORTER: What community?

THE WITNESS: Spence, S-p-e-n-c-e.

Q Now, Dr. Conrad, the State Highway Department had proposed to build an elevated highway through the Spence community in South Dallas County, had it not?

A Yes.

Q And that was through a predominantly black area?

A That's correct.

Q And many of our black citizens in that area objected to the building of that elevated highway, because

they felt there would be rapes, murders and other crimes committed under it. Is that true?

A More than just that.

Q And unsightly?

A Unsightly. The community felt as though they had not been consulted adequately. The felt as though there had not been adequate representation in their behalf at Austin, since there were no blacks sitting on the Commission that designed the highway.

Q Now, isn't it true that all 15 members of the Legislative Delegation from Dallas County who were elected at large went to the Highway Department for the black community and assisted in getting that highway lowered to ground level the way the black community wanted it?

A I don't know whether all 15. I do know that after a mass meeting that was chaired by the three black elective officials in Dallas that we got massive support from all over, and I would rather suspect that we did have all 15 of the legislators.

Q Now, Dr. Conrad, one of those members of the Legislature is named John Boyle, who lives in Irving, is he not?

A Yes, I think he does live in Irving.

Q And another one is Jack Hampton who lives in

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Carrollton?

A Yes.

Q Now, each of those gentlemen live farther from the Spence community than the single member legislative representative who represents Ellis County and other counties, does he not?

A I don't know about Ellis County.

Q You're not sure of that?

A I do know that the places where they live are some distance from South Dallas.

Q Yes, and you also are aware that the Representative who represents that single member district immediately to the south of the Spence community did not participate in helping lower that highway, did he, Dr. Conrad?

A Who? I don't know the Representative immediately south of that.

Q All right, the Ellis County Representative, if he helped, you never saw it, did you?

A I didn't know anything -- I didn't know which one of the 19 helped.

Q But you don't know of that Ellis County one?

A No, sir.

Q Now, don't you feel that one of the main

reasons that those 13 members from Dallas County helped get that highway lowered through the Spence community was because the black community was a principal motivating factor in getting them elected in the November primary (sic)?

A Why, certainly.

MR. LUNA: Thank you.

JUDGE GOLDBERG: Anyone else have any questions?

MR. COLLINS: Yes, Your Honor, we have just a brief redirect.

JUDGE GOLDBERG: All right.

REDIRECT EXAMINATION

BY MR. COLLINS:

Q Dr. Conrad, I think Mr. Luna asked you about your role in placing Mr. Holmes' name on the DCMC slate in the legislative race; did he ask you about that?

A No, not the DCMC.

Q Well, let me ask you this. Did you play any role in seeing that Mr. Holmes was on or was one of the members running in the Dallas County legislative races?

A Yes. Let me go back and bring you up to

date, because I don't think the Committee for Responsible Government or whatever the name is had anything to do -- any part in this.

The untimely death of Joe Lockridge immediately after a primary left a void in the delegation from Dallas County. He was the only black representative that we had had. At the time of his death the only thing that could be run for in a regular election was the unexpired term of Mr. Lockridge, which amounted to about six months, say from the time of his death -- it must have been in May or June, whatever time it was, up until the beginning of the new session.

A group of us met together, and after much deliberation and haggling we ended up pushing Ian Holmes into the race, and I put it like that, because he was a reluctant candidate. We raised a small amount of money in the black community, and we did not get the endorsement of any major downtown group.

It was a 22-man race for this unexpired term that attracted little generalized public notice, so, therefore, he won it without a runoff in this slate, because the turn-out was very, very low, and we were able to get the minority vote out and also kept quiet to keep the white majority from being aware of the race.

Now, immediately after this election some of us approached, and I put it like this. I am trying to remember the exact sequence, but the Democratic Committee had the authority to select somebody for the November slate. Although Ian Holmes won the primary, it was incumbent upon the Democratic Executive Committee to select somebody for November. The election had no legal effect on that, and we simply had the opinion and attitude and posture that unless Ian was accepted as the candidate for that unexpired -- for that open slot of the ticket, we would not support the whole ticket, and he was accepted, and we worked together that fall in getting the whole slate elected.

Q All right. Let me ask you this question, Dr. Conrad.

Have you ever been consulted by anyone from the Democratic Committee for Responsible Government about any of the other 14 places in the Dallas County election---?

A I have never been consulted by them for any of them -- for anything that I can recall.

MR. COLLINS: That's all the questions we have, Your Honor.

EXAMINATION 419

BY JUDGE GOLDBERG:

Q Dr. Conrad, you are a member of the School Board of Dallas?

A Yes, Judge.

Q As I understand it, the School Board has two types of representatives, those that come from a district and those that are elected at large?

A We are all elected at large but must live in a district.

Q That's right, but you must live in a certain district?

A Yes.

Q Is it your experience as a legislator on the School Board that the fact that you are elected at large has anything to do with the policy determinations which are made by the Board?

A No.

JUDGE GOLDBERG: Thank you.

JUDGE JUSTICE: If nothing further, you may stand down, Doctor.

Please call your next witness.

(WITNESS STANDS ASIDE.)

MR. CUNNINGHAM: Rev. San W. Holmes, Jr. 420

My name is E. Erica Cunningham, representing Plaintiff Intervenors -- Rev. San W. Holmes, Councilman George L. Allen and Dr. Emmit J. Conrad.

SAN W. HOLMES, JR.,

a witness called by Plaintiff Intervenors, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q Would you state your name, please?

A San Holmes, Jr.

Q And what is your address, Mr. Holmes, or Rev. Holmes?

A 6910 Robin Road.

Q And that is in Dallas, Dallas County, Texas?

A That is correct, in Dallas.

Q How long have you lived in Dallas, Rev. Holmes?

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A I have lived in Dallas for approximately 15 years.

Q And what is your profession or occupation?

A I am a minister in the United Methodist Church.

Q How long have you been a minister, sir?

A I have been a minister for about 20 years.

Q Do you hold any particular office within the United Methodist Church?

A Yes, I am District Superintendent of the Dallas Metropolital District.

Q Now, coming directly to the point at hand, do you hold any particular elective state-wide office?

A Yes, I am a member of the Texas House of Representatives from Dallas County.

Q Any particular place, sir?

A Place 5.

Q And how many members of the State Representatives from Dallas County are there?

A There are 15.

Q When were you first elected to the State House of Representatives?

A I was first elected, I believe the date was June 18, 1968.

Q Was this in a primary -- this was after the demise of Representative Lockridge. Is that correct?

A Right, this was in a runoff to fill the unexpired term of the late Representative Joseph Lockridge.

Q Did you receive the endorsement of an organization known as DCRG?

A I don't know that I received the endorsement of that organization at that particular time. Some of the persons who are presently in that organization endorsed me during that runoff.

I was unaware of the DCRG as an organization during that particular time.

Q After the runoff and you were elected to fill the unexpired term of Representative Lockridge, did you then run in the primary and in the general election on the Democratic ticket?

A I ran in the general election in 1968, in the primary in 1970.

Q At that time did you receive the endorsement of the DCRG?

A Yes, I believe I did.

Q Is their political philosophy anywhere near that of yours?

A We differ on a number of things.

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Q And I believe there were other members of the 15-man elective State Representatives that did -- at least, there was one that did not receive the endorsement of the DCRG?

A Yes, in '70.

Q Who was that, sir?

A Representative Dick Reed, I believe.

Q Was his political philosophy anywhere near that of yours?

A We tended to vote similarly on most issues.

Q If you know, what is the general political philosophy of the 15-man committee, the other 13 since you and Representative Reed seem to have the same political philosophy?

A Oh, I don't know how I would describe the philosophy of the 15-man delegation from Dallas. We differ on a lot of things. We agree on a lot of things. I suppose we run the entire spectrum of what is generally referred to as the conservative to the liberal philosophy, a little heavy on the conservative side.

Q Representative Holmes, are you familiar and having run a county-wide race with the cost of running a campaign in Dallas County, Texas?

A Yes, sir, I am.

Q When you were first approached or pushed into running for the State Legislature, would you state what your costs were?

A I don't know what the total cost was. I was able to raise about $900.00 in the black community. The majority of the support came from other persons in the party, and I have no way of knowing just how much money was involved. It was quite a sum, I know, because we put out one mass mailing, and that was pretty costly.

Q Now, when you say for the party, you are speaking of the Executive Committee of the Dallas County Democratic Party?

A Right, I received their help, especially in the general election November '68 and '70.

Q If it had not been for that support and help from the Democratic Executive Committee of Dallas County, Texas, do you think that you could have been elected in that primary in that general election?

A I am positively certain I could not have been elected if I had not had that support, financial and otherwise.

Q You have indicated that you are familiar with the cost of running county-wide. If a candidate was to run from a single member district, do you think that his

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cost would be more or less?

A I think it would definitely be less, much less.

Q Do you think then that a black candidate would have a better opportunity of being elected to the State Legislature from Dallas County when he ran in a single member district, as opposed to a multimember district?

A There is no question in my mind that a black individual would have a much better chance of being elected if he ran from a single member district, than a multimember district.

Q I believe you are familiar with an attorney by the name of Berlaind Brashear?

A Yes, I am.

Q I believe he ran at the same time that you did in the last election?

A That is right, in the primary. Of course, I had no opponent; he did.

Q Let me ask you this. At the time that you were pushed into running for the Legislature Representative Lockridge was the only black of the 11-man team. Is that correct, sir?

A Of the 15-man team.

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Q Of the 15-man team.

A That's right.

Q O. K. And when you were elected, you filled the void that Representative Lockridge had filled. Is that correct, sir?

A I guess so, in a sense of speaking. We were both black.

Q And when you ran the last time and were elected -- I believe you said in '70?

A Yes.

Q O. K., you ran uncontested. Is that correct, Representative?

A In the primary.

Q In the primary?

A Right.

Q You had a Republican opponent?

A Yes, I did.

Q But you did run as a member of a team in that general election?

A That is correct.

Q How long since your engagement in politics have you seen any instance where more than one black has been placed on the team or the slate of the Dallas County Democratic Party?

A No, I don't recall any instance of such.

Q Do you recall any instance where the Dallas County Democratic Party placed more than one black on the slate prior to your time or during the time of Representative Joseph Lockridge?

A No, I don't recall such an instance.

Q In other words, Dr. Conrad, Councilman Allen and yourself are in one respect -- share one thing -- you are the one black in the State Legislature, Dr. Conrad is the one black on the School Board, and Councilman Allen is the one black on the City Council. Is that correct?

A From Dallas.

Q From Dallas?

A Yes.

Q And that in each instance each of the three of you have had to run on a team or slate to be elected to that position. Isn't that true?

A That is correct.

Q And from your knowledge do you think that if either you or Dr. Conrad or Councilman Allen had not been on that team or that slate, that either one of the three of you could have been elected?

A I am--.

Q Running county-wide.

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A I am as positive as I can be that we couldn't be elected if we did not have the kind of support provided by a slate, financial and otherwise.

Q State, Representative Holmes, whether or not the one black representative, and in your case I will direct it to you, where you are elected as a part of a team that you are expected to represent the black community in Dallas County, Texas.

A Would you repeat that question, please?

Q As the one black representative of the 15-man team, are you expected to represent the total black community in Dallas County, Texas?

A Yes, I find this to be something that is expected of me. I am expected to be aware of most of the concerns of the black community. I sometimes get the feeling I am expected to be the sole representative of the black community, that that's left up to me, but I do find that that is my job in many respects.

Q In other words---.

A I don't shirk from that job, although I try to represent the total community, as well as the black community.

Q Are you saying, Representative Holmes, that this places something of a burden upon you to represent the

220,000 blacks in Dallas County, Texas, sir?

A Well, I say it is a burden in the sense that it is my understanding in the multimember setup that everybody represents everybody else in the county, and we are all supposed to represent everybody. If all of us don't represent the interests of the black community, as well as we represent the interests of the other community, well, then, it is a burden upon me when I do try to be sensitive to the total needs of the black community, as well as the needs of the total community.

Q With respect to the sensitivity that I know that you have for the black community, do you feel that the other 14 members of the Dallas County team share this sensitivity with you?

A I think there are some members of the team who share that sensitivity. On the other hand, I don't think enough of the members share that sensitivity in the way that I would like to see them share it from the standpoint of how they vote and how they relate to the issues and how they actually seek to become informed as to the concerns and the needs of the black community.

Q Do you think that a part of this is caused by the multimember county-wide method of electing candidates for the State Legislature?

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A Certainly, I think so. I think that not only holds true for the interests of the black community, but I think there are other interests -- groups in the community that are not -- whose needs aren't spoken to, because they become lost in this kind of multimember setup where everybody is supposed to represent everybody, and yet, it can be a setup where some folk are never represented. Nobody is really represented in full.

Q Do you think that if Dallas County had a single member district plan where all 18 legislators would be elected in single member districts that there would be an increased sensitivity and a larger number of the persons who would represent Dallas County, Texas?

A I think there would be---. Yes, an increased sensitivity to the problems of the entire community than is the case under the present setup.

JUDGE JUSTICE: When you say the entire community, you mean the black community?

THE WITNESS: Yes, I mean the black community and the white community, as well, but especially the black community in light of the fact that I feel that under the present setup given one black representative that the black community has gotten the short

end of the stick.

JUDGE GOLDBERG: Would the same interests be served if the requirement was that there be a resident from one of 18 districts?

THE WITNESS: I think that that in my opinion wouldn't solve the total problem, but it would certainly increase the sensitivity and make things much better than they are right now.

JUDGE GOLDBERG: Did you appear before the Legislative Redistricting Board?

THE WITNESS: Sir, I wrote a letter -- sent a telegram to the Legislative Redistricting Board, requesting appearance before that Board. I got a letter from Lt. Governor Ben Barnes after the Board had rendered its decision, stating that so much correspondence had come across his desk during the time that I had written him, that he did not have the time to read my telegram or to respond to it, and that is why I did not get a response to my request to appear before that Board, but I certainly telegramed a request on my -- as a matter of

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fact, it was a joint telegram sent by City Councilman George Allen, by Dr. Emmit Conrad, who just testified, and myself.

(No omission here.)

JUDGE GOLDBERG: What did this telegram say?

A We stated that we were very much in favor of single member districts for the Legislative delegation and representatives in Dallas County; and we felt that such a setup would be in the best -- would give the Black community its proper representation. It would be more sensitive to the needs and to the concerns of the Black community; that we were wanting to appear before the Board to express that concern, to express our position before that Board.

JUDGE GOLDBERG: And you don't think that concern could be represented by merely a residential requirement?

A I don't think it could be expressed by merely a residential requirement, because you then would still have the setup where the entire community or a small group of people could determine who runs and who is eventually elected, because you see, just because a person lives in a community does not necessarily mean that that person has the best interests of that community in mind. I think only that the people in that community are in a position to best state that any

individual has really that interest at heart.

JUDGE GOLDBERG: How do you define "community"? By color, by party, by political point of view, by church -- what do you mean by "community"?

A Well, I think a community could be, defined along all those lines that you mentioned, but when I talk about a community, I am talking about a group -- an area that has certain things in common. It does not have to be race or, for example, you take residential area -- a neighborhood.

JUDGE GOLDBERG: Does it have to be economic?

A What is that?

JUDGE GOLDBERG: Does it have to be economic?

A It could be economic, it could be racial, it could be party and it could be a combination of all of these along a certain common line -- area and otherwise.

JUDGE GOLDBERG: Thank you.

DIRECT EXAMINATION

QUESTIONS BY MR. CUNNINGHAM:

Q Representative Holmes, while you were in the last Legislature, did you serve on any of the Congressional or Legislative Redistricting Committees?

A Yes. I was on the Committee of the Congressional and Legislative Redistricting.

Q Who was the Chairman of that Committee?

A Representative Delwin Jones from Lubbock.

Q Were any hearings held outside of Austin?

A Yes. There were hearings around the State. There was one in Houston, I recall we had one in Dallas, also, and some other areas.

Q Did you appear before the one in Dallas, sir?

A Yes, I did.

Q Okay. Did other persons appear in Dallas?

A Yes. We had a number of persons who attended that hearing and appeared before the Board.

Q Do you know what the majority preference of the people who appeared before this hearing was with respect to a multi-member or single member district?

A Yes. As I recall, the majority of the persons who appeared before that committee in Dallas expressed a desire to see single member district prevail in the redistricting plan for Dallas County.

Q Did you have any type of understanding with the Chairman of this Committee with respect to whether or not Dallas County would be multi-member or single member districts, based upon the majority sentiment?

A Well, it was my understanding as a member of the committee, that the purpose for the hearings was to get input suggestions from the various areas in the state and that on the basis of those suggestions, and the fact that we received them in those hearings, we would then draw up a plan, a redistricting plan. Of course, the final plan for Dallas County, as you well know, is one that provided for multi-member -- for multi-member representation, in spite of the fact that the majority of the people at that particular

hearing expressed a desire for a single member district.

Q And during your last term when you were here in Austin, did you have any number of Blacks that appeared in Austin when this matter of multi- versus single member districts was being discussed?

A Yes. That is -- we did. As a matter of fact, more Blacks came to Austin during the last session from Dallas County as a group to lobby, than I have ever seen come since I have been a member of the Legislature. And this year they came down, several groups, all expressing the desire that we would have single member districts for our Legislative district in Dallas County.

Q Okay. You are not a member of the D.C.R.G., are you?

A No. I am not.

Q Do you know whether or not there are any Blacks that are members of the DCRG?

A It is my understanding that there are at least one or two. I don't fully know the situation on that question.

MR. CUNNINGHAM: Pass the witness.

JUDGE GOLDBERG: If it were a fact

that the Republican party was in the majority in a certain area in Dallas county, would you be in favor of a district which served that party?

A Yes, sir. I certainly would.

JUDGE WOOD: Rev. Holmes, of course you would have to feel, would you not, the same responsibility, where you are representing a single member district, to the minority groups, such as the whites, Mexican-Americans, or Republicans in that district, would you not? Could you do that more in a single member district than where you were in a multi-member district?

A Yes. I think you could moreso in a single member district.

JUDGE WOOD: You think you could show the same feeling to the minority in your district, such as the whites and the Mexican-Americans and Republicans that are all in your

district? Do you follow me?

A Would you restate the question, Judge?

JUDGE WOOD: It is perfectly obvious where you have a single member district rather than a multi-member district, you are going to represent, in your particular instance, the majority of your constituents which will be Blacks?

A Yes, sir.

JUDGE WOOD: Do you have the same sensitive feeling in that district to the whites, the Mexican-Americans and Republicans that you now have in the multi-member district?

A Yes, sir.

JUDGE WOOD: You see, you are beholden now to all of the people in Dallas; whites, Blacks, Mexican-Americans and sometimes Republicans and the like?

A Yes, sir.

JUDGE WOOD: Would you have the same feeling in a single member district where there are obviously minorities composed of whites, Mexican-Americans and Republicans and the like?

A To the total County?

JUDGE WOOD: Keeping in mind that whites are the minority in your district, if it is a single member district, you understand?

A Let me see if I follow your line of questioning.

JUDGE WOOD: You not only have to be sensitive to the Blacks that are the majority, but to the whites and other ethnic groups, Mexican-Americans, and all that?

A Yes, sir.

JUDGE WOOD: Do you feel like that is going to dilute your feeling of sensitivity where you are now representing a multi-district, and where your responsibility is to the entire group?

A No.

JUDGE WOOD: All races?

A No. I don't think it would dilute my sensitivity to the interests of the groups in the County, because I personally feel --

JUDGE WOOD: -- I mean in your district; not in your county. Because they are going to be the minority. In your single member district where you say that the Blacks are predominant, and you are predominantly responsible to the people in your district, the minorities are going to be the whites, are they not, in a singlemember district? Is that true?

A Yes. According to what district -- I am still not --

JUDGE WOOD: -- I am saying assume you represent a district which is predominantly black.

A Right.

JUDGE WOOD: And the minority group would be the whites, the balance

of them would be white, Mexican-American and Republican or minority groups.

A Yes.

JUDGE WOOD: Do you feel the same sensitivity to those people, where they are not responsible and you don't look to them for an election, than you would in a multi-district where you look at all of Dallas County for reelection? Would that dilute your sensitivity to where you feel you are no longer responsible to them because you don't rely on their votes? You don't need their votes?

A No. It would not dilute my sensitivity.

JUDGE WOOD: You follow what I mean?

A Yes. I follow what you mean. But I don't think that would do that in my single member district.

JUDGE GOLDBERG: How many groups do you think we should create in order

to develop this single member district theory?

A I don't think it is a matter of creating groups. I think we ought to create 18 single member groups in Dallas County.

JUDGE GOLDBERG: Would it be purely on a population basis?

A Purely on a population basis.

JUDGE GOLDBERG: Where everything was contiguous?

A So everything is contiguous and equal population and Senator Muzy said along the lines of common economic interest, and I think if that were done, it would provide districts that would be fair to the total City and we would have Black representatives; we would have white representatives, and Chicano representatives and all work together and have a great say.

JUDGE GOLDBERG: But you don't think we have to gerrymander to get a group representation?

A No. I don't think you would have to gerrymander if they were all equal in population and along lines of common economic interest. I don't think

you would have to gerrymander it. Now, if you --

JUDGE GOLDBERG: -- who is going to make this economic interest judgement?

A I would like to have some part in making it. And I am sure everything would work out pretty good.

JUDGE GOLDBERG: I am sorry.

A But Judge, I am sorry, but may I say just one other thing?

JUDGE GOLDBERG: Sure.

A To your question of gerrymandering, you know you can gerrymander in many different ways, and you can gerrymander groups out and I think you can also just as easily gerrymander groups in. It can be a useful tool.

JUDGE JUSTICE: Has there been cross examination of this witness? Is there cross examination?

MR. RICHARDS: We are still on direct.

MR. COLLINS: We are still on direct, I think.

CROSS EXAMINATION

Questions by Mr. Collins:

Q John Collins is my name, Rev. Holmes, and I have just a few questions for you. You expressed an opinion earlier that you do not think you could be elected County-wide in Dallas County without being on the slate. Did I understand you correctly?

A Yes. Given my understanding of what the slate has meant to my election in the past.

Q Now, why is it you don't think you could be elected without this slate?

A Number one, because of the financing that is required for anybody to get elected county-wide. That is the basic thing, and when you talk about financing, you are talking about a whole lot of other things.

Q What about physical manpower in distributing cards and posters and this kind of thing?

A You are talking about that when you are talking about financing.

Q What about such a problem as name recognition? Does that have anything to do with being

elected on a county-wide slate?

A Oh, I certainly think that is an important ingredient. And that all depends. As a matter of fact, I personally feel that name identification is helpful -- more helpful in the election of a Black than of a white, in a county-wide setup when you have got the slate thing going for you.

Q Reverend Holmes, what about the life style of the entire community there in Dallas County? Does that have anything to do with, you think, with, your, say inability to be elected county-wide? You expressed the opinion you do not think you could be elected county-wide without the slate. Does the life-style in the entire community have anything to do with that?

A Well, I think -- well, yes, I think so. Granted, we are making progress in Dallas in human relations, and I am appreciative of that fact, but I still believe that it would -- different housing patterns that we have, which in my opinion, that says something, and given some of the other problems that we have, for example, out in some of the country towns, Mesquite, Richardson, and many other areas, you have a very small percentage of Blacks living in these areas which says something about

the life-style of some of the areas in Dallas County. And I think that when you put all of that together and look at it -- some of the problem areas, I think we would be kidding ourselves if we didn't admit and we all know this to be true, that it would be difficult for a Black to be elected county-wide. The smaller the area, the greater his changes of being elected as an independent representative to anything.

Q Have you, yourself, ever had an opponent in a Democratic primary?

A I have never had -- I have only been in one Democratic primary and I didn't have an opponent in that one.

Q Now, can you describe briefly for the Court what you think some of the issues are that the Black community in Dallas County is interested in?

A Well, I must admit -- I think the number one issue that the Black community is interested in right now is this whole matter of single-member districts.

Q Assume there would be other issued that would come up in the Legislation section.

A Yes. There are other issues. I think that the Black community certainly is interested in

economical, the tax programs, you know, just where those taxes -- the majority of the taxes are going to come from -- you know, who is going to be taxed. And the source of revenue -- tax revenue. I think the Black community is definitely interested in education, quality education, vocational education. The Black community is interested in job opportunities. I think this is a major concern -- this whole area of job opportunity in State agencies and other -- and in businesses throughout the State.

Q Based on your experience as a legislator, how would you evaluate the performance of the Dallas County legislative delegation in being responsive to the needs of the Black community on these issues?

A I personally having served as a member of the Dallas County delegation, this is my own personal opinion. When you talk about the present 15 man delegation, I would have to rate that delegation low in terms of meeting many of the -- the major concerns of the Black community. And these concerns are the ones I just stated, and especially just like I say, we are talking about the same number of districts. And we are talking about the taxes. I think when we talk about job opportunities, and when you look at the whole picture

in the State government, representation on boards and agencies, being given an opportunity to be involved in the decision-making process, I think that when you truly take a real honest look at the picture, and what has been accomplished, you would have to agree. And you asked me as a Black man. And speaking from the Black community and this is what I would say, I would rate it low. On the other hand, there have been some instances, of course, where there has been some concern demonstrated by some of the members moreso than others.

Q Now, Reverend Holmes, you stated earlier that you felt that you were expected to represent the Black community in Dallas County. Now, who is it that expects you to do this?

A Well, when I say this, I am simply trying to point out the fact -- this is something that I have experienced as being the only Black Representative from Dallas County. I sometimes find myself in a position wherein if I am not sensitive to some of the needs to the Black community, I don't call attention to some problem areas or some needs or so forth, and so nobody else does it. And perhaps because that is where I live, and you know, that is where I move and that is where I have my being, and I think that is unfortunate. Whereas,

on the other hand, I feel that I am very sensitive to some of the issues in the larger community in Dallas County, because of my job. I do move about the total County, but I don't think that is true in reverse among the majority of the members of the Texas House of Representatives and the present membership from Dallas.

MR. COLLINS: Thank you, that's all of the questions I have.

JUDGE GOLDBERG: Any other questions? Mr. Luna?

MR. CROUCH: Your Honor, could we have a couple of questions still on the record?

JUDGE GOLDBERG: Yes.

JUDGE WOOD: State your name for the record.

MR. CROUCH: Tom Crouch, representing the Republican intervenors in the Tyler and Dallas cases.

CROSS EXAMINATION

QUESTIONS BY MR. CROUCH:

Q Reverend Holmes, how much staff do you have as a member of the State Legislature?

Cross - Holmes 45i

A I have one secretary.

Q Is that the same staff that is afforded all of the Legislators?

A One and a half.

Q Do you find that adequate to respond to the needs of the constituency of a million, three hundred thousand?

A I find that very, very inadequate.

Q Do you think in response to some of the questions that have been propounded to you by the Court, if I understand your testimony correctly, you think you could be more sensitive to the total needs of the constituency of 74,000 than you could to a constituency of a million, three hundred thousand?

A I certainly do.

MR. CROUCH: I have no further questions.

JUDGE GOLDBERG: Let's take a 10 minute recess.

(Whereupon, Court recessed for 10 minutes).

Cross - Holmes: 452

JUDGE JUSTICE; You may examine, Mr. Luna.

CROSS EXAMINATION

QUESTIONS BY MR. LUNA:

Q Reverend Holmes, we talked earlier in your testimony about Berlin Basbear, who ran on the Democratic ticket in 1970, and was defeated. I would like to ask you if it is not a fact that, first of all, Mr. Berlin Basbear was relatively new to the community when he offered himself for election?

A I believe that is correct; that would be a fair statement. He had only been in the City about three or four years, I believe.

Q And, although he was defeated, isn't it true that of the approximately 15,000 votes that he received in the run-off, that more than half of them was from the white community?

A I am not sure. I don't recall the exactu figures.

Q All right.

A I just would have no way of verifying

that.

Q Now, you mentioned running on a ticket. Actually, that is what politics is -- is group effort and helping get people elected -- isn't it?

A A lot of group effort involved, yes, I agree.

Q And, no one in politics would be expected to get elected if he didn't have some friends to help him?

A That is right, -- and money.

Q Yes, sir. Reverend Holmes, where do you live in Dallas County?

A I live at 6910 Robin Road.

Q Now, if I might refer to a County-wide map. I want to show you this map and ask you to tell us generally where it is that you live?

A Okay.

Q By precinct number. Would that help, do you recall?

A Right. Yes, I live in here (witness points) I live in, let's see, can you bring that a little closer -- one, sixty nine, right there.

Q Precinct 169 as shown on Plaintiffs' Exhibit Number 2, is that right?

A That is right.

Q Now, if we went to single member districts, where you live -- if you had to rely on the Black vote to elect you, we probably would lose you as a member of the Legislature, wouldn't we?

A You probably would. And, you see, that is not -- having Zan Holmes in the Legislature is not my concern -- it is having legitimate representation from the Black community, and I am well aware of that.

Q You would admit that Zan Holmes is legitimate representation, wouldn't you, Reverend Holmes?

A What I mean is that having -- I would like to think that I am. But, I do know that I would not be as legitimate as being elected from a group, smaller group of people, who knew that I was their representative and they elected me and that nobody else had much to do with it.

Q Without asking you to be immodest, Reverend Holmes, there is not any question in your mind but what the Black community knows that you take care of their interest as effectively and as energetically and as knowledgeably as anybody could that is represented from any district, isn't that true?

A Yes, sir. Now, I would like to think I am joined in that by 14 other representatives.

Q Yes, sir.

A Which I don't feel I am.

Q Now, assuming that Dallas County was divided up into 18 single member districts, do you feel then that you would be joined in that effort that you have described for the Black community by your 17 colleagues from Dallas County elected from single member districts?

A Yes, sir. I say we would, because, you see, that means I would have only one vote, they would have only one vote and they would need me to help them vote and do the things they needed in their areas, and likewise I would need them and we would work together. Nobody would have any more power than anybody else.

Q Hasn't worked that way in Harris County where they are elected from Congressional Districts, has it?

A Yes, sir. Look, that is Harris County, Mr. Luna.

Q "Yes, sir, it has not worked that way"?

A I don't know. I am not in a position

to know just how -- you see, Harris County hasn't really had single member districts.

Q But, it has had less than county-wide districts?

A Yes. But I still think there is a lot -- a big difference between what they have and single member districts. There are many other factors that come into being when you have single member districts.

Q Would it be fair to say that based upon your experience as a member of the legislature, that the Harris County delegation has worked together as a team much less than the Dallas County delegation has worked as a team? I don't want to put you in a position --

A No. Yes, when you are talking about working together as a team, I think this thing of the Harris County delegation has sort of been overplayed. I have seen this delegation work together for a lot of things that I felt were in the best interest of all of Harris County, and when you talk about a team, you know, it is working for what, you know. You can have a team -- I mean, what have you said? Yes, team effort.

Q Well, the Harris County delegation, for instance, could not even agree on a person to be

the Chairman of the delegation, could they?

A I am not that closely familiar with that particular situation.

Q Do you --

A But the only thing I would say, Mr. Luna, that might be good. You know, maybe that is what we need, you know, more diversity, more opinions represented in our delegation.

Q All right. Let's talk about diversity, Reverend Holmes.

A All right.

Q On the Harris County delegation in the at-large elective process, it is true, of course, that we have on that delegation one Black at the present time?

A That is right.

Q We have on that delegation one man who is white, but has heavy support from the labor unions and the Black community, to-wit: Dick Read, do we not?

A That is right.

Q We have another one or two that could clearly be defined as liberal ideology, as far as your political philosophy is concerned, do we not, sir -- that is Jim Strong, to begin with.

A Yes.

Q And, then we have another member of that County-wide delegation who is Jewish, do we not?

A That is right.

Q We have another one from Greek descent?

A Yes, that is right.

Q You have several Catholics, three or four, do you not?

A I believe so. I am not certain about all of the religious affiliations that are members.

Q So, now, would it be fair to say that in the County-wide delegation from Dallas County, that it is as truly representative of bringing all of those under the great Democratic umbrella that the Democratic party goes by as you could come under in any kind of process that you could think of?

A Mr. Luna, I don't know how to answer that question. Are you saying that was done by design?

Q I would like to think it was done by the elective process, wouldn't you think?

A It was done by the elective process, yes, with some influencing. But, what do you want me to say? I am trying to --

Q All right. Let me ask you this: Does Dallas County, in your opinion, have a community of interest that is county-wide in many, many areas?

A Yes, I think so. I don't know exactly what you are asking.

Q Health, for instance.

A Yes, I think so.

Q All of them work for the health bills, Eleemosenary Institution, the Parkland Hospital and all of the things that have to do with health?

A Yes.

Q Certainly, disease knows no boundaries, races or color lines.

A No. Disease knows no boundaries. But, you can kind of define health problems down to a smaller unit, you know. You know, and then you run into some problems there. But, generally, we have general concern. But, we are talking about specific areas as to how they are affected, then you have got a different picture or situation, I believe.

Q I believe you have told us that the last election on the Democratic ticket, county-wide, that you were not opposed on the Democratic ticket by anybody.

A In the primary.

Q In the primary?

A Right.

Q Now, wouldn't that tend to indicate that politically in Dallas County there is no discrimination against the Blacks?

A No, sir. Mr. Luna, I don't think you can draw that conclusion from that.

Q Well, nobody wanted to discriminate enough to run against you, did they?

A I don't know why. I am not in a position to know why nobody ran against me. You see, I just don't know.

Q I think it was because they didn't think they could win county-wide against you.

A Well, that might have been Dallas, paying its respect to its token Black.

Q Now, it has been mentioned here that among many other organizations, that somewhere along the line the D.C.R.C. may have endorsed you?

A Yes.

Q Is it true that the -- many other Democratic clubs endorsed you, the Democratic men of Dallas County, the Democratic Women of Dallas County

the Garland Democratic Women and endless other Democratic organizations?

A Yes, that is true.

Q And, wouldn't you say that in the Democratic primary, that all of these various democratic organizations are working to happy let candidates that appeal to them?

A Candidates that are --

Q That appeal to that group, whether it is democratic men --

A I would think so.

Q Now, having been elected, then, and endorsed by these many groups, has the D.C.R.G. any party officer, or any other group from Dallas County tried to pressure you in any way that you voted as a member of the Legislature?

A No, sir. I don't -- I can't recall of any instance where any organization -- other than the normal and usual lobbying that goes on -- groups expressing their opinions and asking me if I would vote a certain way.

Q Reverend Holmes, you, of course, as a member of the Legislature, as any other good member of the Legislature, have voted your conscience and your

convictions, have you not?

A Yes, I have.

Q Now, had you been elected from a singlemember district, wouldn't you have done the same thing?

A Yes, sir, that is true.

Q And, you would have had the same conscience and the same convictions if you had been elected from a single member district?

A Yes, sir, I would like to think that I would.

Q Thank you very much.

A But, I would hope I would have been more effective in actually doing something about it, too.

MR. LUNA: Many of us think you have been mighty effective.

JUDGE GOLDBERG: Anyone else have any questions?

MR. COLLINS: We have no other redirect, Your Honor.

CROSS-EXAMINATION

BY MR. CROUCH:

Q Rev. Holmes, Mr. Luna asked you if there had ever been any member of the DCRG, I believe, threaten you about any vote in the Legislature.

Now, has any member of the Dallas delegation ever threatened to kick you off the slate or see that you didn't get on the slate or get that support that you have testified was essential to your election?

A What are you referring to, Mr. Crouch?

Q Well, I had heard rumors that there was an incidant on the floor of the house in which one of the members of the Legislature questioned your vote and threatened to see that you were off the delegation if you did not vote a certain way on a particular bill.

A Oh, yes. I think what you are referring to is an incident that took place during the last of the '69

session when we were voting on the tax bill. This was late in the evening, around 12:00 o'clock, near 12:00 midnight, after we had all been working hard all day long, and there was a procedural rule vote on whether or not to postpone the tax bill. I voted to postpone that bill, because I hadn't read it. It was just placed on my desk, as on all the members' desks just prior to the vote itself, and I recall that one member of the delegation did challenge me on that, so I am sure that this must be what you are talking about, because there were those who witnessed this and know about it, and one member of the delegation did challenge me openly and indicated his disapproval of the way I voted and indicated I should have deferred to him or indicated that.

Q Who was that Representative?

A Representative Ben Atwell.

Q Did he threaten to see that you did not get back on the slate for the next election if you didn't change your vote?

A I don't know if he threatened me -- if it was a threat or just in that way, but -- and I don't recall the exact words here at this point, but I believe that he did indicate that he had some say about who was on the slate as Chairman of our delegation---.

Q You got the impression---.

A ---that he had some influence.

Q Is it safe to say you got the impression that you might not be on that delegation if you didn't heed his advice?

A Well, I had -- I mean this didn't, you know, arouse any fear or anything in my heart about the way I was going to vote or anything like that. I didn't know what kind of power he had, you know, or what he would do and what effect it would have, except that this was said.

MR. CROUCH: Pass the witness.

MR. LUNA: May I ask one more question?

JUDGE GOLDBERG: Sure.

MR. LUNA: It didn't worry you enough that you changed your vote, did it?

THE WITNESS: Oh, no, sir, didn't change my vote.

(LAUGHTER)

JUDGE GOLDBERG: Any other questions of this witness?

MR. RICHARDS: No questions.

JUDGE GOLDBERG: Then we will go on from here. Let's get the next one.

JUDGE JUSTICE: You may stand down, sir.

(WITNESS STANDS ASIDE.) 466

MR. RICHARDS: Your Honor, this concludes, I think, at this point our presentation for Dallas. We had hoped to have Councilman Allen, who is still iced in in Dallas, and we will either try to put him on out of order or take his deposition in Dallas tomorrow, I suppose.

(To Mr. Cunningham) Is that all right with you?

MR. CUNNINGHAM: I had been in contact. His plane came to Austin, and they sent it back to Dallas because of the weather.

MR. RICHARDS: We may have to try -- if we can bring him live, we will, because we would like to, but if not, we will try to take his deposition.

JUDGE GOLDBERG: Yes, we will just have to meet that problem. What else have you got to offer?

MR. RICHARDS: That concludes our presentation. We will offer, I think, at the conclusion of the San Antonio evidence probably jointly a map that is sponsored by both.

JUDGE GOLDBERG: Who goes next?

JUDGE JUSTICE: Are the Mexican-Americans ready to proceed?

MR. IDAR: Yes.

MR. RICHARDS: And we offer the exhibits that we have identified and attached and described on our list.

JUDGE JUSTICE: They are already in evidence unless there was some objection made which was urged before this Court.

MR. GEE: Your Honor, if I might interject, it seems to me to be appropriate at some point that the exhibits for the Republicans---.

JUDGE GOLDBERG: I thought you asked that they be introduced.

MR. GEE: Well, I did, Your Honor, but I wanted to be sure that the list is attached to the Pretrial Order.

JUDGE GOLDBERG: Oh, oh, be sure that it is. Give it to the Clerk. I'm sorry.

MR. GEE: There is an objection to one of the exhibits, which was noted on there by Mr. Curry.

JUDGE JUSTICE: At the time that you present the exhibit, why, Mr. Curry should

urge his objection at that time.

MR. CURRY: Your Honor, in order to save the time of the Court, they are the standard objections that have been presented earlier to most of the exhibits, and, as I recall, the Court has indicated they will take them under advisement and carry them with the case, so we will let it go at that.

JUDGE GOLDBERG: Thank you.

MR. LUNA: And we have our exhibits. Rather than interrupt now, may we later give them to the Clerk?

JUDGE GOLDBERG: Yes.

MR. LUNA: And our amendment to the Pretrial Order.

JUDGE JUSTICE: Are you ready to proceed, Mr. Idar?

TESTIMONY PRESENTED BY THE MEXICAN-AMERICANS

MR. IDAR: Ed Idar, Jr., representing the Bernal Intervenors in the Tyler case.

I don't feel it is necessary at this time to make any kind of statement, as far as a legal position, Your Honor. We have filed a memorandum, a trial brief.

I would like to just touch for a moment or two on the depositions that the Court has taken in evidence. I hope that I can be of some service to the Court by pointing out what I consider some general lines that appear to run through some of those depositons that I think are very material to this case. 469

For one thing, as you will read the depositions of the different Board members and the members of their staffs, one thing that seems to come out very clearly is the little consideration that was given to the effects of the plans they were working on, on the minority groups.

In some cases testimony was to the effect, "Oh, yeah, we did think about it." It came almost as an afterthought, after Counsel specifically pointed it out to them and allowed them a few minutes to think about it. As an afterthought they pointed out, "Oh, yeah, we took that into consideration, too."

Another thing that seems to come through clearly is the fact that little consideration was given by the people involved to whether or not it was desirable to continue with the

status quo in the State of Texas as far as the multimember districts outside of Harris County. 470

Another thing that came clearly through is the fact that at no time until the final plans were before that Board was a policy decision ever made as to whether or not the Board wanted multimember or single member districts. The staff had little or no guidance. There is some testimony by the Attorney General, one or two other people, that he presumably gave them some indication as to what the law was. This was not in writing. Nobody recalls specifically what he said. It appears almost conclusive that the action of the Board ultimately resulted or was, in effect, the action of the Lt. Governor and one of his assistants, and the rest of the Board merely ratified it.

I think Mr. Calvert testified that he relied largely on the judgment of the Attorney General and the Lt. Governor, as far as making up his mind how to go.

Another thing that is very crucial, I believe, two or three of the staff members and Commissioner Armstrong testified that the prime element was very crucial. Mr. Armstrong

indicates in his deposition that he abandoned his effort to push for a single member district plan when he was told that there was little or no time left in which to come up with a single member districting plan for the other major metropolitan areas aside from Houston. Yet, Mr. Spellings, the Lt. Governor's assistant, testified that he, in effect, starting with a blank map and the help of one other person prepared the entire House Districting Plan, including the major areas and the 23-member districts for Harris County, in less than three days. He started on a Tuesday afternoon about 5:00 o'clock, and by Thursday afternoon, the day before the Board finally approved the plan, he was through with the job. 471

A week before that time he had talked to the Attorney General, and at that time he told the Attorney General the time element was such that it was going to be practically impossible to prepare a redistricting plan for the entire state allowing for multimember districts for every metropolitan area.

I simply wanted to emphasize those lines of evidence that appear to come through quite clearly

in the whole series of depositions that have been taken, because one of the positions that we take in our lawsuit is that the Texas Legislative Redistricting Board is not exactly in the position of the Texas Legislature. We didn't have on that Board the inter-play as between House members among each other or among Senators among each other or as between the two houses. We had a decision that is affecting the entire State of Texas and is going to affect all of us possibly for the next ten years based on the factors that I have indicated to this Court, and the Court will see as they read through these depositions. 472

Now, to proceed, Your Honor, I would like to call Mr. Richard Avena to the stand.

JUDGE JUSTICE: What is the witness' name?

MR. IDAR: Richard Avena, A-v-e-n-a.

JUDGE JUSTICE: Please take the oath, Mr. Avena.

J. RICHARD AVENA, 473

a witness called by the Bernal Intervenors, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. IDAR:

Q Will you please state your full name for the record?

A My name is J. Richard Avena.

Q And what is your position, Mr. Avena?

A I am the Director of the Southwestern Field Office for the United States Commission on Civil Rights.

Q How long have you occupied that position?

A About three and a half years.

Q What did you do prior thereto?

A I was a researcher and translator for the Library of Congress in Washington, D. C.

Q And where were you born and raised?

A I was born in Salt Lake City, and I was raised in El Paso, Texas.

Q Have you resided in San Antonio in Bexar County?

A Yes, I have.

Q For how long?

A Approximately three and a half years.

Q Can you tell very briefly -- give us a very brief idea what the U. S. Commission on Civil Rights is.

A The United States Commission on Civil Rights is a bipartisan independent agent set up in 1957. Our mandate from Congress is primarily to investigate complaints of denials of voting rights, denials of constitutional rights, primarily in the area of the 14th Amendment, equal protection of the law.

We have among our duties the serving as a National clearing house for Civil Rights information, and our main function is to report to the Congress and the President of the United States.

Q Are you charged specifically by the Congress with a fact-finding function?

A Yes, we are.

Q What are your own duties briefly in your work for the Commission?

A Well, I am the Director of a five-state area. We have our regional office in San Antonio, and

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primarily we work through our State Advisory Committees. We have in each one of our five states an advisory committee that primarily holds hearings and conferences and this type of thing to appraise the national commission on the status of civil rights in that particular state.

MR. IDAR: Your Honor, I would like to use this witness for the purpose of introducing a series of publications by the U. S. Civil Rights Commission. I have been advised by Counsel that they are going to have objections to some of these publications. Maybe I will just proceed one by one and see what you---.

MR. CURRY: Were these objections by Mr. McDaniel?

MR. IDAR: I think he has provided in the Pretrial Orders an objection to the effect that he will object to them on the grounds of hearsay -- I don't know what else.

(REPORTER'S NOTE: The Court here confer out of the hearing of the court reporter.)

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JUDGE JUSTICE: I am authorized to say for the Court that we will consider the objections, but you may go ahead and make reference to them.

MR. CURRY: And we can just consider the objection in the order as having been made?

JUDGE JUSTICE: Yes.

MR. CURRY: Very good, thank you.

MR. IDAR: I might point out to the Court for the benefit of the Clerk and for the benefit of the reporter here that we used the initials "BI" for Bernal Intervenors in preparing our exhibits, BI followed by a number and the number of the case.

BY MR. IDAR:

Q Mr. Avena, I am going to show you Plaintiffs' Exhibit BI-12 and BI-13 and would like to request that you identify them for us.

A This is the report from the United States Commission on Civil Rights and its summary of the report, dealing with the administration of justice in the Southwest and the Mexican-American. This report was released

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in 1970 after two or three years of fact-finding activities, which included questionnaires, visits to law enforcement officers and hearing process.

Q Is that an official publication of the U. S. Civil Rights Commission?

A It is.

Q Does it have any particular restrictions or any guidelines as to how it can be used or for what purpose it can be used?

A No, sir, as far as I know, it is a public document authorized by the United States Commission on Civil Rights, a Federal document that can be used at the will of the people.

MR. IDAR: I would like to tender those into evidence at this time, Your Honor. I assume they will be admitted subject to the objections that Counsel has indicated.

JUDGE JUSTICE: Yes.

Q Mr. Avena, I believe you have before you BI Exhibit 14?

A Yes, sir.

Q I wonder if you could identify it for us.

A This is a report from the Texas Advisory Committee to the U. S. Commission on Civil Rights released

in February, 1970. This is a compendium of the activities of the committee for the previous five or six years and is a summary of what they considered to be the major problems in the area of civil rights in the State of Texas.

Q Do you know how the committee went about compiling this information?

A Yes, sir, mostly it was based on a series of hearings that the committee held throughout the state dealing primarily with problems facing blacks and Mexican-Americans.

Most of the information was taken from a six-day hearing that was held by the Commission, not by the committee, not by the Advisory Committee, but by the Commission in San Antonio in 1968.

JUDGE GOLDBERG: What is the earliest date of the hearings? I served on that Commission — I became a member of the Court in 1960. Do you have any material prior to that involved here?

THE WITNESS: The information in this particular report primarily is from about '65 on, sir.

JUDGE GOLDBERG: Any objection?

I served until I was appointed on the Court.

THE WITNESS: You served on the Advisory Committee?

JUDGE GOLDBERG: Yes. I was appointed to the Court in 1960. Does the material cover anything prior to 1960?

THE WITNESS: Sir, as far as I can tell, it doesn't, but I cannot actually say, because I have only been with the Commission about---.

JUDGE GOLDBERG: Any objection?

MR. CURRY: These Defendants won't raise an objection, Your Honor.

MR. IDAR: Sorry, Your Honor. I didn't realize we were going to have that come up.

(No omission here.)

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Q I believe you also have BI Exhibit Number 15?

A Yes, sir.

Q Would you please give us a brief idea of what it consists?

A This is first a series of about five or six reports by the Commission on the problems of Mexican-Americans in the area of education. Now these reports will deal with problems of education throughout primarily a five-state area-- five states of the Southwest. This is the first report that deals primarily with numbers or what is called ethnic isolation; segregation of Mexican-Americans by district, by schools, by classrooms and by classes and curriculum and so forth.

JUDGE GOLDBERG: Anything to do with the election?

A No, sir.

JUDGE GOLDBERG: I just want to know what kind of documents we are dealing with here.

MR. IDAR: Well, I was going to ask him about this particular one.

Q Isn't there a section in that particular report that relates specifically to Bexar County?

A Yes, sir. There is a section that deals

with Texas and Bexar County and it talks about the ethnic isolation of Mexican-Americans studied in Bexar County.

MR. IDAR: I might point out to the Court that one of the reasons we are tendering this type of evidence is in light of the fact that our pleadings have not yet been answered. As far as I know the stated has not conceeded jurisdiction or the issues relating to a class that we alleged before this Court. Therefore, we feel it incumbent upon us to show that we do have or that we do represent a class of people that have common problems that have been affected by certain situations causing injury and deface of character in the State of Texas. We have a state-wide class and we also have classes in specific areas, and I believe that this information would relate to those issues.

JUDGE JUSTICE: As I understand it, the State made no objection to the maintenance of your suit as a class action, subject only to proof that there was a-- such a class.

MR. IDAR: That is exactly what I am seeking.

JUDGE GOLDBERG: And in truth and in fact,

if it wasn't a class action, these suits are still cognizable.

MR. IDAR: Yes, sir. We offered the pleadings--

JUDGE GOLDBERG: --It looks to me like we are talking about something that is not overly important, but go ahead.

MR. IDAR: Well, I am just trying to support my class allegations with this type of evidence.

JUDGE GOLDBERG: Go ahead.

BY MR. IDAR:

Q Let's see. Was that Number 15-- the last one?

A Yes. This was 14-- yes. BI 15.

JUDGE GOLDBERG: In Chavis, they denied a class action. They took a straight suit.

MR. IDAR: That is the reason why--

JUDGE GOLDBERG: --But that is all right with me. If you want prove it up, go ahead.

Q We have another report there which is BI Number 16?

A Yes, sir.

Q Would you please indicate--

A --This is Report Number 2 of the Commission

which deals with such things as drop-out rates, the holding power of the schools, achievement levels, reading levels, this type of thing in the Southwest. It also deals with Bexar County and Texas as a whole.

MR. IDAR: I might also mention, Your Honor, at this time that I have been informed-- I haven't seen this-- maybe I just picked up a wild rumor, but it is my understanding that a three-judge federal court in Alabama either yesterday or today ruled on this type of case and it is my further understanding that--

JUDGE GOLDBERG: We are in the process of getting that opinion now.

SENATOR MAUZY: Your Honor, we are xeroxing it in the Clerk's office at the moment.

MR. IDAR: It is my understanding that issues of discrimination of different groups there are very much involved in the lawsuit and that is another reason why we are seeking this type of evidence before the Court.

Very quickly, Your Honors, I would like to save the time of the Court by tendering our exhibits BI 18, BI 19 and-- well, these two, in particular. The first one, BI 18, is a record

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of the hearings before the subcommittee on executive reorganization of the Committee on Urban Operations of the United States Senate.

JUDGE GOLDBERG: Dated?

MR. IDAR: June the 11th and 12th, 1969. And this relates to legislation that was designed to establish an interagency committee on Mexican-American affairs.

And we have another work here prepared by Fred H. Smith, entitled Spanish Surname of American Employment in the Southwest. That is our Exhibit BI 19. And we would like to tender these two, and I also have here a Xerox copy of a report prepared by the Texas Legislative Council dated January, 1969, which relates to employment in the state government and it is supposed to be statistical survey by ethnic origin. It indicates the breakdown by state agencies, the number of Mexican-Americans and black people that each state agency employs; the job categories and salaries and so forth.

MR. CURRY: Is that Number 20?

MR. IDAR: This is 11. I am sorry.

JUDGE JUSTICE: They will be received in

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evidence subject to the objection.

Q Okay. There is one more that I would like to show you, Mr. Avena. SI Number 177

A Yes, sir. This is the transcript of the six-day hearing that was held in San Antonio, December 9th to 14th, 1968, by the Commission, itself.

Q And those were hearings dealing specifically with what?

A The hearings dealt exclusively with problems facing Mexican-Americans primarily in the State of Texas and to some degree in Bexar County. The hearings were divided into four major sub-areas: discrimination in employment, education, economic security, the whole area of federal programs, and how they are reaching the people and the administration of justice.

MR. IDAR: I would like to tender that, also, Your Honor.

JUDGE JUSTICE: Subject to the objections, it will be received in evidence.

Q All right. Now Mr. Avena, let's move on. Based upon your experience with the Commission, your knowledge of the work that the Commission has done, your own investigations and the familiar-- I presume you are familiar with most of the exhibits we have just introduced?

A Yes, I am.

Q Can you give this Court some idea as to condition of the situation of the Mexican-American population in Bexar County, Texas? Can you give us some idea of where it is concentrated?

A Yes. We did a survey of the population-- Mexican-American or surname population, based on the 1960 figures which we have updated this material yet from the 1970 census. We found most of the Mexican-Americans living in the primarily western part of San Antonio. They have much lower income level than the rest of the population of Bexar County. Much lower grade in school attainment, much lower-- much higher degree of unemployment. Much higher percentage of these people of this type in this area, for example, working in menial type jobs and this type of thing.

Q Do you have any idea as to the concentration as to the Mexican-American concentration in the State of Texas?

A Primarily seventy to seventy-five per cent of the Mexican-Americans in Texas live in the Southwestern part of the United States; primarily those seventeen or nineteen counties bordering Mexico.

Q All right. Do you have any idea as to the

median income on a statewide basis?

A The median personal income in 1960, I think was approximately $1,500.00. Median family income, I think, was closer to $2,500.00. This was roughly fifty-five to sixty per cent of the Anglo median income for the same groups.

Q As between the Mexican-American say living in your say smaller urban communities or cities, and your farm workers, can you give this Court some idea whether or not there is a distinction as to the conditions affecting those in the cities and towns as contrasted to your farm worker or migrant population?

A I think, for example, most of the Mexican-Americans in Texas are urban. Three-fourths live in communities of 10,000 or more. A third of all Mexican-Americans in Texas live in three metropolitan areas, San Antonio, Houston and El Paso. As far as the migrant population, the State of Texas estimated in 1965 approximately 167,000 migrants in the state and over ninety per cent of these were with Spanish surnames, assuming most of those were Mexican-American. And I would say that the Mexican-American farm worker, like all farm workers in the State of Texas, is suffering a discrimination in that he is not adequately covered by most of the employment

laws that are designed for other employees in the state.

Q What are some of the state statutes that have not been enacted that, in your estimation, would help eliminate some of the problems of the migrant-- agricultural migrant?

A Well, you have no state unemployment compensation laws, disability, for example. You have no state housing standards for migrant workers. You have a minimum wage law that was recently passed that covers farm workers, but in my estimation it is inadequate.

Q Why do you say that?

A For example, there is a federal minimum wage law that covers farm worker, but the farmer has to have used in the past calendar year, in any one quarter, five hundred man-days of farm labor. Now the state statute, as I understand it, covers those farmers that do not have-- have not used five hundred man-days in the preceeding calendar year, but only with a carefully described condition, and that condition is that the farmers must have used three hundred man-days in every single preceeding calendar year quarter. This means most of your farmers in the State of Texas have one quarter in which they have used no farm labor at all and they are exempt from the statute.

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Q Do you have any idea of the employment rate of the Mexican-American in San Antonio or Bexar County?

A The unemployment rate?

Q Yes.

A The latest figures, I think, for example came in 1966. I think the United States Department of Labor did a study in a particular area of west San Antonio. They found here that the unemployment rate was eight per cent when the unemployment rate for the city as a whole was four per cent, I believe. They also found that there were about twenty-five per cent of these people unemployed that had not worked for six months or so. Eighteen per cent, I think, of them-- there were a larger percentage of these, that were working only for a time. I think it was eighteen per cent. Also, for example in the west side of San Antonio, where most of your unemployment is, there was what we would call a nonparticipation rate of about nine per cent. That is, people who could work but are not working-- not looking for jobs. Therefore, they are not included in the unemployment rate.

Q Are you personally familiar with what is generally known as the west side of San Antonio?

A Yes, sir, I am.

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Q Would it be fair to categorize that area as a slum area or ghetto?

A Yes, sir, it would.

Q Are you familiar with the type of housing that is to be found in that area?

A Generally familiar, yes.

Q Do you have any figures that could give this Court some guidance as to the value of the housing, and the conditions of the housing?

A Well, the figures we used in the presentation of the hearing, and again this way the '60 census figures, and the figures pointed out, for example, in the City of San Antonio as a whole, remembering again that most of the Mexican-American and larger percentage of the poor Mexican-Americans live in the west side area, only sixty per cent of the Mexican-Americans in San Antonio lived in what your federal agencies would consider to be safe and sound housing. Mexican-Americans more than Anglos in San Antonio, for example, are apt to live in dilapidated, unsafe housing, overcrowded housing.

Q Are we talking about the west side?

A We are talking about primarily the west side, where most of the poor Mexican-Americans live.

Q All right. What about health conditions

in that particular area of San Antonio?

A Again, the figures point out that Mexican-Americans in San Antonio are more apt to suffer from diseases such as pneumonia, diabetes, and Mexican-American children are more apt to suffer from child diseases and consequences thereof, than the other children in San Antonio.

Q Can you give us a very brief idea as to the educational condition of the Mexican-Americans in San Antonio and this particular area of San Antonio we are talking about?

A Yes. Again, for the hearings, we prepared a study of nine school districts in San Antonio and these nine districts, we found that the Mexican-American primarily was segregated; not only by district. You had two or three districts that had most of the Mexican-Americans, but they were segregated by schools. You have in one large district, for example, the San Antonio Independent School District, you have schools that are almost a hundred per cent Mexican-American. In the same district, the schools that are almost one hundred per cent Mexican-American, are a quarter of a century older than the schools that have a lower percentage of Mexican-Americans.

Q What about the nature of the school administration in that area?

A With the exception of one school district in San Antonio, all of the superintendents are Anglos. Most of the Boards are Anglos. I think there is only-- there are two that I know of, chairmans of school boards in San Antonio area that are Mexican-Americans.

Q Do you know anything as to the achievement level of the students in those so-called Mexican-American schools?

A Yes. It seemed in our study, we found that the higher the degree of segregation, for example, of Mexican-Americans in schools, the lower the achievement level of the child, the reading level, the testing level and this type of thing. And not only that, in your integrated schools that had say forty or fifty per cent Mexican-American, you would also find mostly with the Mexican-American, many cases the Black student who achieved at a lower level than the Anglo student.

Q Do you know anything as to the drop-out rate as to the schools involved in west San Antonio?

A Two of your school districts, San Antonio Independent School District and Edgewood, accounted for seventy-four per cent of all of the drop-out rates in all

of these nine districts we studied, and these are the two districts that had most of the Mexican-Americans.

Q Incidentally, you have mentioned the Edgewood School District. Is it not true that Plaintiffs involved from that particular district were recently involved in a decision by a Federal District Court, a three-judge court in San Antonio, that is going to affect the entire financing structure of the State of Texas?

A Yes, sir.

Q Specifically with respect to employment in San San Antonio, are you familiar with a study that was made of certain restaurant employment practices?

A Yes, sir. Again, we did the survey. We had been told that if you were to go to a restaurant in San Antonio, for example, you would find a pattern and the pattern that we were told was that when it came to employees who dealt specifically and directly with the people, you would find very few Blacks and Mexican-Americans. You would find most of the Blacks and Mexican-Americans washing the dishes and serving as busboys. So we took several restaurants in San Antonio, specifically looking for restaurants that did not serve a particular type of ethnic food, and surveyed these and we found this pattern to be true. And I think it was about fifteen

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restaurants with over three hundred employees in San Antonio.

Q Can you also give us some brief idea as to the administration of justice as it affects a Mexican-American, based on the findings of the Commission?

A The reports given from our findings-- also we heard testimony at the hearings held in San Antonio-- that Mexican-Americans, for example, were throughout the Southwest suffering from cases of excess brutality by police officers, both state and local officers. We found Mexican-Americans misrepresented in juries. We found that in many cases your courts, federal, city, county and state courts, did not have many Mexican-Americans working there as clerks and interpreters and whatever. We also found that the mail system did not effectively reach the Mexican-Americans and that many Mexican-Americans did not have access to adequate mail. I have found and we have found in the report, the lack of representation, legal representation for Mexican-Americans. I know a lot of case, for example, of alleged police brutality, particularly in your smaller communities where lawyers will not take these cases because they feel they will jepoardize their relationship with the enforcement authorities in that area.

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Q Is there a program relating to police brutality in San Antonio?

A In my estimation there is, yes.

Q Is that true of your west side?

A That is true primarily of your west side and south side and I would say also the east side where most of the Black community lives.

MR. IDAR: That is all, Your Honor.

JUDGE WOOD: Any questions?

MR. LIMA: I don't have any questions, Your Honor.

CROSS EXAMINATION

Questions by Mr. Curry:

MR. CURRY: Thank you, Your Honor.

Q Excuse me, sir. Did I understand your name is Avena?

A Avena.

JUDGE WOOD: You had better identify yourself for the record.

MR. CURRY: My name is Al Curry and I represent the State-- one of the Defendants.

Q In connection with these problems that you identified, Mr. Avena, have you been instrumental in

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initiating any particular suits in the courts to rectify these problems?

A No, sir. Our agency is a nonenforcement agency. We have no enforcement authority whatsoever. If there are any suits to be filed on behalf of the government, this is done by the Justice Department.

Q Does your agency communicate with enforcement agencies with respect to these matters?

A Yes, we do.

Q And have you personally participated in this?

A Yes, sir.

Q And does your agency, and I don't mean it derrogatorally, but does your agency lobby for these purposes in the State Legislature?

A For what purposes?

Q To alleviate the problem you just stated.

A The agency does not lobby. Sometimes, from time to time, we will have members of our advisory committee, for example, Mrs. Young who was just formally relieved as chairman of our committee, in the past has testified before the State Legislature at the request of certain chairmen of committees or subcommittees on a variety of issues.

Q Mr. Avena, I am sorry, but we have misplaced an exhibit which I understand designated those Mexican-Americans serving in elected offices in Bexar County, Could you identify for the Court the individual Mexican-Americans that serve in public office and what position they hold?

A In the State Legislature?

Q State Legislature and/or city or school offices.

A We have one state senator, Senator Joe Bernal. And we have a-- I think three members of the City Council. And several members of school boards there.

Q How many members are there of the city council?

A I think there are nine altogether or seven. I am not sure.

Q Have you made a study of the population of Bexar County as far as the breakdown between Mexican-American, Blacks and Anglos?

A The study is primarily of the San Antonio metropolitan area.

Q All right. What would be, based upon your research, the percentage of the ethnic breakdown, Anglo--

A I think your 1960 census would show about

a forty-three or forty-four per cent Mexican-American and about five or six Black and the rest Anglo. The Office of Economic Opportunity in 1962, I think if you would check with them, would be closer to fifty per cent Mexican-American.

JUDGE WOOD: How much would be Black?

A About six to seven per cent.

JUDGE WOOD: Six or seven?

A Yes, sir.

Q And this was in 1966, which was a projection?

A Yes, sir.

Q Now, as I understand it, and I think the Court has been made aware at least or at least His Honor, Judge Justice has, that there is some anticipation that a report from the1970 census report on Mexican-Americans only is anticipated shortly, but based on your experience in San Antonio and the information you have, are you of the opinion whether or not at this time, the Mexican-American community population exceeds that or is more than fifty per cent?

A It is my personal opinion that it is about fifty or a little bit more than fifty per cent at this time.

Q All right. Now, have you made any studies

to determine the percentage of registration, voter registration in the Mexican-American community in Bexar County?

A No.

Q You cannot tell the Court to what degree the-- in terms of comparison, Mexican-Americans participate in the voter registration?

A In registered voters, I wouldn't consider myself qualified.

Q All right. Do you have or have your studies reflected any percentage of voting aside from percentage of voting registration-- the percentage of Mexican-Americans that vote in elections?

A No, we have not.

Q You have no opinion one way or the other or no information at all?

A Well, my own opinion is that that is probably your percentage of participation in Bexar County is higher than say a community with a much smaller percentage of Mexican-Americans. That is my own opinion.

Q But you don't have any figures you can give the Court?

A That's right. I do not.

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Q Where do you live in San Antonio?

A 510 Bloomfield.

Q Is that on the west side?

A It is on the northwest side.

Q Northwest side? That would be Shavano Park area?

A No. It is right off of Bandera Road on the northwest.

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Q To your knowledge, have there been any candidates recently seeking to run or have their names put on the ballot to be elected from the area in west -- West San Antonio -- for Senate Legislative offices?

A In the last legislative race, I am familiar with the particular candidate who worked for the Edgewood School District who ran. I am sorry, but I am not qualified to say where he lived, so I don't know exactly where he lived. He was a Mexican-American.

Q Mr. Adams, you understand that one of the issues before this Court is whether or not Bexar County should have single member districts?

A Yes.

Q Or multimember districts? You understand that?

A That is right.

Q And, you understand the distinction?

A That is right.

Q I haven't heard you express an opinion on the distinction, but I will ask you this. Isn't it conceivable that in Bexar County, particularly and specifically Bexar County, where the Mexican-American population is in your opinion 50 percent or slightly

over 50 percent --

A Sir, let me correct you on that. I didn't say in my opinion it was over 50 percent in Bexar County. It said it was over 50 percent in the City of San Antonio.

Q Do you know what it is relating to the County?

A I sure don't.

Q Would you not still, though, state that the Mexican American community is the largest group in Bexar County, in percentages?

A In the entire county? It could be very equal to the white Anglo community.

Q So, in Bexar County, the distinction between the ethnic groups, Mexican-American and Anglo, is pretty much on balance?

A I would say roughly so.

Q So that to the extent that people participate in the legislative processes, in terms of voting and electing multi-member districts, would necessarily have to make the Mexican-American group as effective in terms of total potential voting power, in effect, as the white vote, is that correct?

A I am not sure I understand your

question.

Q I probably didn't make myself clear. My point is this. I will call it the "Anglo population" is equal to and not greater than the Mexican-American population in Bexar County?

A Uh-huh.

Q And then, they are on equal footing as far as potential votes and participation in electing members to the Legislature?

A Well, I don't think it is that simple. I think that --

Q I understand. Excuse me. I understand that it is not a simple matter, but I am asking in terms of numbers, if, in fact, the population percentages are equal, then the potential votes, perhaps, ought to be equal?

A I think it would probably lean toward being unequal toward the Mexican-American, because I think in Bexar County, there is a sizeable portion of Mexican-Americans who are not citizens and who do not vote.

Q Do you have any idea what that percentage is?

A I don't know, sir.

Q And, what is the percentage of Blacks?

A I think it is from -- roughly right now, -- about six to seven percent.

Q Of the total county population?

A Of the City population. I think that holds pretty close for the County as well.

Q Do the Mexican-Americans in Bexar County usually vote the Democratic ticket in legislative races?

A I think that would be a safe assumption.

Q Do the Black ethnic group voters in Bexar County normally vote the Democratic ticket in legislative races?

A I couldn't positively say.

MR. CURRY: We have no further questions.

JUDGE JUSTICE: Is there any redirect examination?

MR. IDAR: No, sir, Your Honor.

JUDGE JUSTICE: You may stand down, sir.

MR. IDAR: I would like to call Mr.

George Korbel, but I would like to have a couple of minutes to get some exhibits into the Courtroom.

(There was a recess at this time).

JUDGE JUSTICE: Mr. Marshal, would you check to see what progress he is making to get his exhibits in here?

THE MARSHAL: Yes, sir.

JUDGE JUSTICE: Let me have the attention of counsel, please. Arrangements have been made through the intervention of Judge Wood, with Judge Suttle, that Mr. Barrera will be here in the morning at 9:00 o'clock. Judge Suttle has requested that we ought to take the witness out of order so that he may be returned to San Antonio at the earliest possible time. Is there any objection to that procedure? All right. Notice is given, then, that Mr. Barrera will be the first witness tomorrow morning. May I ask counsel about how many witnesses do you intend to present in connection with your case?

MR. IDAR: I would have Mr. Korbel

and I will have one more witness, and possibly one in rebuttal after the State presents their case. 576

JUDGE JUSTICE: Are you able to anticipate how long the remainder of your case will take? We are trying to approximate when we will get through here.

MR. IDAR: I would estimate that Mr. Korbel, Your Honor, I don't know about cross examination, but hopefully, it shouldn't take more than an hour or so, and the other witness will be an expert which on direct examination, again, probably half an hour to 40 minutes, about.

JUDGE JUSTICE: You anticipate safely speaking, you will be through about noon tomorrow?

MR. IDAR: Yes, we should be.

JUDGE JUSTICE: Are the Republicans able to give us an estimate as to how long it will taken for that case to be presented?

MR. EASON: Your Honor, that is what I was approaching the electrum about. We have sued both on the legislative and the Senate redistricting. Certain elements of

my case, naturally, will be covered by Mr. Idar. I will try not to burden the Court, in the interest of time, with additional questions to the witnesses insofar as it pertains to my case, and we will adopt the testimony of Mr. Idar's witnesses, insofar as it affects our case in the legislative part. 507

JUDGE GOLDBERG: It shouldn't take long, then?

MR. EASON: That is what I am hoping, Your Honor. And, that is the reason I have been asking questions of the various expert witnesses, in order to establish --

JUDGE JUSTICE: We want counsel to develop their case. We are just trying to understand how long it will take.

MR. EASON: That portion of my case--

JUDGE JUSTICE: How long, Mr. Crouch, how long will it take to present your case?

MR. CROUCH: I think it will -- we can do our direct case in two hours.

JUDGE JUSTICE: All right.

JUDGE WOOD: How about the Defendants rebuttal?

MR. CURRY: Your Honor, 5:8 Mr. McDaniel will be primarily responsible for the Mexican-American defense. And, I know he has, of course, Mr. Barrera. He has, I believe, one other witness for sure, and I am not certain about that. But, my guess is that perhaps two hours, maybe perhaps a little bit more.

JUDGE WOOD: We could finish tomorrow, then, perhaps?

MR. CURRY: I would think so. The defense, as far as the Dallas suit is concerned, is joint, so we would be relying primarily on Mr. Luna.

MR. LUNA: I would think that the direct examination in that connection would take less than two hours.

JUDGE GOLDBERG: We can finish tomorrow, then.

JUDGE WOOD: There is no doubt we can get through, without a night session, by noon Thursday?

MR. CURRY: I think so. Do you mean the defense finishing?

JUDGE WOOD: I mean the whole case.

I am anticipating for their rebuttal -- Finishing the direct for all sides tomorrow and the rebuttal, perhaps, for the Plaintiff on Thursday. Do you feel like we could get through by noon Thursday so we could start the arguments by noon Thursday? 509

MR. CURRY: That is my opinion.

JUDGE WOOD: Is that your opinion? Is that your best opinion, gentlemen?

MR. LUNA: It kind of sounds like they will be through by noon tomorrow, if so, that could be --

JUDGE JUSTICE: There still remains the Republicans, though.

MR. CURRY: If we work tomorrow night as the Court has indicated we will, I am sure we will finish.

MR. LUNA: He is talking about maybe not working tomorrow night.

JUDGE JUSTICE: All right. Proceed, counselor. Has the witness been sworn?

THE CLERK: Yes, sir.

GEORGE KORBEL,

a witness called by Mr. Idar, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. IDAR:

Q Please state your name for the record.

A George J. Korbel.

Q Where are you from, Mr. Korbel?

A I am from Brackenridge, Minnesota.

Q How long have you resided in Texas?

A About 7 weeks.

Q And what are you doing in the State of Texas?

A I am presently a Vista lawyer, I am assigned to the Mexican-American legal defense fund.

Q And, where did you go to school?

A I went to college at St. John's University in Collegeville, Minnesota, I received a B.A. there in political science and a minor in philosophy

and I attended law school at the University of Minnesota, I graduated from there in 1968. I was admitted to the Bar in Minnesota, I believe in September of 1968. I have been active in full-time private practice of law since September of 1968.

Q Have you had any experience in practical politics in your home state of Minnesota?

A Yes. I have had, I think, substantial experience.

Q Of what nature?

A Well, while I was in college, I was an officer in our college Democratic organization. I was one of the organizers and founders of the Minnesota Democratic organization. After I left law school, I was the -- from 1969 until I came down here to Texas -- I was the Wilcon County Democratic Chairman, I was an elected member to the Minnesota State Democratic Executive Committee. You will have to excuse me, because I have a hoarse throat.

Q In connection with your activities in Minnesota, did you ever have occasion to get involved in analyzing electoral type data?

A Yes. For the 1970 election I was involved in a state-wide computer survey of all voters

in Minnesota. We attempted to analyze, through about a 45 second to one minute telephone conversation with every voter, his political trends and his political tendencies so they could be contacted shortly before the election on election day to make sure they voted. It was a very practical and very effective, I might add, survey.

Q All right. Now, we have certain exhibits in the Courtroom. Were you primarily responsible for the preparation of these exhibits?

A Yes. I was mainly responsible for setting these exhibits up. I had three law clerks, who are full-time students at St. Mary's University School of Law, assisting me. We had several college graduates and I had, I would say, five or six persons attending college helping. At one time I think we had 15 or 16 that were working under my direction.

Q I am going to call your attention to the DI exhibit Number 1.

A Yes.

Q And, can you briefly describe what this exhibit purports to represent?

A That exhibit represents several things. First of all, in the lower left-hand corner --

JUDGE JUSTICE: I wonder if that exhibit could be raised up? Thank you.

A In the lower left-hand corner of the exhibit is inscribed "27 contiguous census tracts", each having a Mexican-American population of 50 percent or greater. The exception to that are two small tracts which we threw in there to make it more contiguous; they have Mexican-American populations of 34 or 35 percent respectively.

Q What would the area that is encompassed in Black indicate?

A The area encompassed in black indicates San Antonio's substantial Black population.

Q Do you have any idea how many census tracts were involved in that?

A I believe that that particular tract, the way it is described, is 6. I am not sure about that.

Q All right.

A I think it is either 6 or 7.

BY MR. IDAR:

Q What does the green area designate?

A The green indicates the predominant white or Anglo area of San Antonio lying to the north and to the northwest primarily, and also to the south and to the southwest. Generally speaking, the tracts for the north and northwest you go, the higher percentage of Anglo or white population. That area---.

Q I notice, though, there is one blank area left in here. Is there any reason for that?

A That is more or less a no man's land, I guess. You have got a mixed population of blacks, whites and Anglos. Predominantly to the north of the red area is a mixture of Mexican-Americans and Anglos, and to the right of the red area is a mixture of blacks and Mexican-Americans.

We also find substantial pockets of blacks located within the red boundaries.

MR. IDAR: O. K. If we can set that down for a minute.

JUDGE JUSTICE: What is that exhibit?

MR. IDAR: That is Exhibit BI-1, Your Honor.

Q I would now like to call your attention, Mr. Korbel, to Exhibit BI-2.

A Yes, sir.

Q Just give the Court a general idea of what that exhibit is all about. We will get into the specifics later.

A Yes. Again, that is -- to the lower left-hand corner is inscribed the 27 contiguous census tracts.

Before I go on, I might say that there are 27 contiguous census tracts under the 1960 census, and one census tracts, the one farthest to the left, which is now divided in two, was single in '60 and has been divided in '70, so, technically speaking, since this is lying on a 1970 map, there are 28 contiguous census tracts within that area.

Q Now, I would like to question you as to the sort of data that you compiled or that you used in the compilation of the data that went into the preparation of this exhibit.

For that purpose I would like to have you -- I am going to show you Plaintiffs' Exhibit BI-3 and see if you can tell us what it represents.

A Yes, this is a photocopy of a computer print-out which I myself personally made at the Alamo Area Council of Governments Office, which is located in the Three Americas Building.

DR. Korbel 516

It is a study done by the Texas State Highway Department, which indicates median incomes by census tract. I might suggest that those are 1970 census tracts, rather than 1960 census tracts. There is a difference in numbering, but substantially they coincide as far as streets are concerned.

JUDGE WOOD: What exhibit number is that?

THE WITNESS: That exhibit is No. BI-3 -- 143.

Q Did you have occasion to show this particular exhibit to Mr. McDaniel?

A Yes, Mr. McDaniel and I discussed this exhibit. It was my understanding he would have no objection to it since this is the State's own study.

MR. IDAR: We would like to tender that.

MR. CURRY: It is not listed?

MR. IDAR: Yes, it should be listed on the Pretrial Order.

MR. CURRY: May I see it?

THE WITNESS: Yes, it is my understanding -- we worked with this photocopy, rather than discover the computer tape of the computer

print-outs the State had.

(REPORTER'S NOTE: Counsel examines exhibit.)

MR. IDAR: We are tendering that at this time.

JUDGE JUSTICE: It is already in evidence if there hasn't been any objection made to it, if it is listed in the Pretrial Order.

Q O. K. Now, I would like to show you another exhibit, Mr. Korbel, which is identified as BI-4.

A Yes, this is another photocopy of the census print-out, 1970 census print-out, and this is entitled Population Characteristics 1971 Census. The date is 5-11-71. I also made this copy myself at the Alamo Area Council of Governments Office located in the Three Americas Building, San Antonio, Texas. It is from the official Government computer tape. I'm not sure which one this is.

MR. CURRY: Excuse me, Mr. Idar. I am under the impression that you are having these identified for the purpose of tendering them into evidence.

MR. IDAR: Yes.

MR. CURRY: It is my understanding from the Court that they are in evidence subject to whatever objection was put into your Pre-trial Order and that it is not necessary to go through with this witness these things unless you want to ask him specific questions about them.

MR. IDAR: No, I just wanted him at this time to familiarize the Court with the nature of the information that he used in the preparation of the exhibits.

MR. CURRY: I'm sorry. I didn't mean to interrupt. I just didn't want to make it unnecessarily long.

BY MR. IDAR:

Q I would now show you Plaintiffs' Exhibit BI-5 and I would like to have you describe it briefly so the Court will have some idea what we are talking about.

A Yes, sir. Again, this is another photocopy of the census print-out entitled Housing Characteristics - 1970 Census, dated 5-11-71.

Again, this is a photocopy of the census print-out made at the Alamo Area Council of Governments.

Q And here is BI-6.

A Yes. This, again, is a photocopy of another census print-out. It is entitled Count of Owner Occupied United by Value - 1970 Census, dated 5-11-71.

Again, I made this photocopy myself at the same place from the same tapes.

Q And I believe I laid a folder there which should be BI-7.

A Yes. This is BI No. 7. This is a document which we received from the State. We were unable to get it ourselves. It is evidently a preliminary running of some kind of some demographic data dealing with Bexar County.

It is my understanding the State has these available for the entire State of Texas. Because of the shortness of time, we only dealt with Bexar County.

Q I would show you now BI-8 and have you identify it.

A Yes. This is a photocopy of a pamphlet put out by the Department of Census based on the 1960 census data. Its citation is U. S. Bureau of the Census, U. S. Censuses of Population and Housing, 1960, and this is basically a study of all the SMSA's, that is to say, Standard Metropolitan Statistical Areas located in Texas.

It includes San Antonio in Bexar County.

Q What was that number, I'm sorry?

A BI-8.

Q And you have another one there that I laid there. I believe that is BI-10?

A Yes, this is another population by the U. S. Bureau of the Census, the population of 1960. It deals specifically with persons of Spanish surnames. It might be cited Final Report, PC(2)-1B.

Q It is my understanding that you used the data contained in the different studies in arriving at the preparation of the exhibits that are here in the courtroom?

A Yes, that data assisted us in part of the preparation of these exhibits. We used other data.

Q Now, I believe this particular exhibit has several overlays on it, doesn't it?

A Yes, sir, it does.

MR. IDAR: If you don't mind, I would like to go ahead -- I would like to have the witness step down, Your Honor, and have him go over these overlays one by one.

(REPORTER'S NOTE: Witness complies.)

MR. IDAR: I would like to have the record reflect the fact that the basic map itself is identified as BI-2, and then the first overlay would be, or is identified as BI-2A. We have four overlays. They are identified by the same number with alphabetical designations at the end.

BI-2A.

A Yes. Now, we are referring specifically to BI-2A. This, again, is an inscription of those 27 or in this of these 28 contiguous census tracts located in the southwestern portion of Bexar County. This area is described as a Mexican-American barrio, and it is also described as the west side.

I might point out in the upper left-hand corner of each census tract is inscribed a number. That number is the census number on the 1970 census. The next figure is the median income by census tract, which was derived from the Texas study that we identified here.

I might point out, and you will notice tha. the census tracts do not follow precinct lines. That is unfortunate that there isn't better planning, but what we did is, we laid the census tracts on top of the map and laid it on by streets, and that is the way the census tracts

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are set out.

Q Did you arrive at certain conclusions on the basis of that data as reflected by that overlay?

A Yes, we arrived at several conclusions.

I wonder if maybe we could wait for the conclusions until we identify the next one?

Q All right, fine. This next overlay is identified for the record as BI-2B.

A Yes. This, again, inscribes this west side or barrio area of San Antonio. Now, reading through and also inscribes all census tracts lying -- all contiguous census tracts lying within the populated area of San Antonio. The first number, again, is the census tract number. The second number is the median income by the census tract from that survey. The third number is the population.

Now, that can be read through the overlay. You can read all these numbers through the overlay. It is easier to discuss with these two overlays together.

Q Now, I guess you want the next overlay?

A No, let's go---.

Q Well, we might as well explain the last one, and then you can get on to your---.

A O. K. This overlay is simply an overlay---.

Q Excuse me a minute. This last overlay is identified as EI-2D?

A This next overlay is simply a description, again, of the west side or barrio area. It is by 1960 census tracts, rather than 1970 census tracts. On that we have -- let's see -- four numbers, I think. Yes, the first number is the total population of the census tract, of the barrio census tract. The second number is the black population of the census tract. The third number is the Mexican-American population native-born of the census tract. The fourth number is the Mexican-American foreign-born on the census tract. That is available for the 1960 census, but is as yet not available for the 1970 census.

Therefore, most of our data is going to have to be based on the 1960 census.

MR. IDAR: If you will, take the seat there, Mr. Korbel.

(REPORTER'S NOTE: Witness resumes the witness stand.)

Q Based on this data you have compiled and referred to, did you arrive at certain conclusions relating to housing---?

A Yes, we did.

Q ---in these 27 census tract areas that is outlined in those exhibits?

A Yes, we did.

The conclusions are that this area contains 78.54 percent Mexican-American. It contains a black population computed at 3.93 percent. This study indicates that while the population of the 27 or 28 contiguous tracts -- in this case we are talking about the 27 tracts, because we are talking about the '60 census -- was 30.82 percent of the Bexar County population and that the said tracts contained 26.79 percent of the Bexar County housing units, 45.04 percent of the Bexar County deteriorated and dilapidated units.

That is, again, from the census study. 40.05 percent of the Bexar County housing units which have shared bathrooms with another tenant or have no bathrooms at all. 18.19 percent of the Bexar County housing units which were built between 1950 and 1960. 54.96 percent of the Bexar County housing units valued below $5,000.00, and the housing has an average median value of $6,462.96, as compared with the Bexar County-wide median value of $9,300.00.

Q Did your study indicate anything relating to the median income of the families residing in that area?

A Yes. Once again, while the population of the 27 tracts was 30.82 percent of the population, the said tracts contained 73.04 percent of the Bexar County families with median incomes under $5,000.00; 2.18 percent of the Bexar County families with median incomes over $25,000.00.

Q And what about the educational factor? Did the study reflect anything having to do with the number of years in school and so forth?

A Yes, the study indicated that while the population of the 27 tracts was 30.82 percent of the total population, the said tracts contained 65.43 percent of the Bexar County persons having never attended school and only 5.26 percent of the Bexar County college graduates.

Q What did it reflect as to the labor force in Bexar County?

A Yes. This area of 30.82 percent of the county population made up 29.55 percent of the Bexar County labor force. However, 46.33 percent of the total Bexar County unemployed work force lived within that barrio.

Q Did your study further reflect the total population of Bexar County?

A Yes, the total population of Bexar County under the 1960 census was 687,151.

Q What about the 1970 census?

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A 830,460.

JUDGE GOLDBERG: What?

THE WITNESS: Bexar County, 830,460.

Q What about the black population? Do you have any total figure for the black population?

A In 1960 the black population of Bexar County was 45,314 or 6.59 percent of the county. In 1970 the black population of Bexar County was 56,622 or 6.82 percent.

Q We don't have any up-to-date figures on the Mexican-American population, have we?

A As yet, the Bureau of the Census has not printed information by Spanish surname.

Q Did you make any findings relating to the type of housing, for example, whether or not it had plumbing in the same 27 census tract area that we are talking about?

A Yes. Using the data which is available from the 1970 census, we found that this 28-tract area of the 1970 census was 23.78 percent of the total population. The said tracts contained 58.52 percent of the total dwelling units lacking some or all plumbing at an average contract rental of $51.86, as opposed to $86.00 for the county as a whole.

The average home owner cost was $8,807.14, as opposed to $13,500.00 for the county as a whole.

47.8 percent of the county housing units valued at less than $5,000.00 were located in that barrio area, and 00.67 percent of the county units valued at $50,000.00 or more were located within that barrio area.

(No omission here.)

Q Now, I believe this other exhibit over here, BI-1--

A --Yes, sir.

Q --relates to a study that you and the people working with you made of certain elections conducted in Bexar County from 1880 to 1970?

A Yes, sir.

Q This was strictly elections dealing with the House of Representative? Is that correct?

A Yes, sir. We restricted ourselves at the present time to only the Texas State House of Representatives.

Q All right. Did you arrive at certain conclusions based on the study you made?

A Yes, sir. What we did, was we made a study of the-- all persons who have run for election to the Texas State House of Representatives from districts contained within Bexar County or parts of Bexar County from 1880 to 1970. We chose 1880 because we wanted to get away from the reconstruction period which would skew any sort of examples which might be drawn from the data. What this chart represents, depends on this chart represent, are the last seven elections to the Texas State House of Representatives.

Q For what period of time?

A That would be the years 1960, for two special elections held in 1961-- those were in November and December of 1961-- of the years 1962 through 1970. Those are seven elections, I believe.

Q Now, what were some of the findings that you made on this study? For example, did you find anything to do with the number of Republicans that might have run in 1970 and so forth?

A Yes. We found-- on the basis of that study-- let me find it in my file. We found that no Republican in the data which was available from the county offices, has ever been elected to the Texas State House of Representatives from Bexar County, or from any tract containing part of Bexar County.

Q Did you make any conclusions as to the number of Mexican-Americans that might have run or been elected?

A Yes. There have been five Mexican-Americans elected to the Texas State House of Representatives from 1880 from Bexar County or from tracts including parts of Bexar County. One of the representatives elected was in 1890-- excuse me-- 1900. The other, four Mexican-Americans have been elected in 1960,

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and on.

Q Do you know how many Mexican-Americans have stood for election?

A Our study is a little confusing because back in the first part of century, and the last part of the last part of the last century, it is difficult to distinguish between Mexican-Americans of like surname. But it appears to us that no more than twenty-seven Mexican-Americans have stood for election to the Texas State House of Representatives from Bexar County or from tracts containing-- or from districts containing parts of Bexar County.

JUDGE WOOD: You mean from 1880 to the present?

A From 1880 to the present. That's right.

Q Would you step down now and give the Court a little better idea of what these different pins represent, bearing in mind the fact that they have different colors and that some of them have a black head or have been painted black at the top.

A Yes. The pins run from-- the pins represent seven colors or seven elections. The blue pins indicate 1970; the red, 1968; the yellow, 1966; the green, 1964, the white, 1962; the silver with a black

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base represent 1961 November special election and the plain silver represents December 1961's special election, and the white pin with a black base represents the 1960 election. Now, the pins with black heads on them indicate an election-- just the regular pin-- indicate simply a standing or a running for election. Those indicate all candidates in all primaries; Democrat and Republican.

Q As well as general election?

A As well as the general election. It indicates all candidates for election. Excuse me. I might qualify that. It indicates all candidates for election that received five hundred or more votes. That way we could exclude write-in votes for insignificant people.

Q All right. Calling your attention to the area on the map outlined in orange or red there, can you explain the few pins in that area there?

A I can't explain why there are a few pins in the area but I can explain what the pins are.

Q Okay.

A This is an election-- I might start out with the earliest election. This would be a 1960 election of Mr. Esquivel, I believe. This is a 19-- excuse me. I misstate that. The silver one indicates a special election in 1961. The second special election,

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the December special election when Esquivel was first elected to the legislature. The white pin with the black head indicates his victory in 1962.

JUDGE WOOD: Speak a little louder, please.

A Excuse me. The white pin with the black head indicates a Mexican-American victory in 1962 and the green pin indicates his loss in 1964. The yellow pin is a man by the name of Porter, a Reverend Porter, who is a Black Methodist minister, who lives at the northern edge of this barrio area. The silver pin with the black shoulders indicates a fellow by the name of [illegible] Cuza who ran for election in 1961 and was-- excuse me-- the first special election in 1961, and he was handily defeated. The silver pin with the black shoulder and black head indicates a Mr. Kothmann--

Q --Kothmann.

A --who was elected to the legislature in 1961 in the first special election; he being an Anglo. He was living in the middle of the barrio, but he is an Anglo. It is my understanding he is no longer living there.

Q All right. How many pins all told, are there within the orange-- the area in orange there?

A There are six pins within the orange area. They represent four persons.

Q That ran in this area for the ten year period from 1960 to 1978?

A That is what our study indicated, yes, sir.

Q And only one was actually elected?

A Only one was actually elected. Well, two were Mexican-Americans. One was a Black and one was an Anglo.

Q As to the rest of the city, would the same thing represent-- would the pins in the rest of the city represent basically the same thing? You have indicated as to the area in orange. That is the people that have run in different areas by the color, and those that were elected.

A Yes. The legend here indicates what the pins mean.

Q And the map would illustrate, by way of general indication, that the overwhelming number of those that have run, as well as have been elected, have been from the northern portion of the city? Is that correct?

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A Yes. The map indicates that especially in the last few years, almost all of the elected officials come from the north and from the northwest. It is almost a progressive sunburst pattern.

Q One final question as to this map here. What about the black area? How many pins do you see in the area in the black?

A Yes. There are two pins in the area in black. One is a blue pin indicating a 1970 election and one is a yellow pin. The blue pin is actually in an almost fashionable of town. It is not really a Black area. When we talk about a Black area, we are only talking about thirty or twenty-eight per cent in this area.

Q All right.

A It is really not a ghetto area, I suppose.

Q Did you arrive at a certain overall conclusion as to voting patterns within the orange area as a result of this study?

A Yes, I did.

Q And what were your conclusions?

A Yes. The conclusions that we arrived at and that I arrived at by the study is that, one, Mexican-Americans are much more likely to vote for a Mexican-

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American than for an Anglo. Do you want me to illustrate that?

Q If you are able to, yes.

A Yes. I can illustrate that. In Place 7 in the 19-- I don't seem to have my notes on that. The totals which we ran on the barrio precincts indicate that Mexican-Americans overwhelmingly vote for Mexican-Americans. For example, in 1971-- excuse me-- 1970, in Place 7, Pinon loses to a West and a Simmons. The vote there is 30,786, 9,153 for West and three thousand seven hundred and-- excuse me-- 37,607 for Simmons. Yet in the barrio area, Pinon carries the total area by 11,646 to 558 for West to 1,603 for Pinon.

Q All right.

A I could go on. Place Number 8 in the 1970 primary election again, Jose Chapa loses to Nelson Wolfe, 32,086 to 41,373, yet he carried the barrio area, 10,907 to 2,635 in the 1968 election. Should I go on?

Q No. I think that is enough to illustrate the point. What other conclusions did you arrive at, based on that study?

A The second conclusion we arrived at was that when Mexican-Americans run against Mexican-Americans, the vote tends to split between them.

Q Any other conclusions?

A You want me to illustrate that by a specific reference?

JUDGE WOOD: That is not necessary.

A The third conclusion was that where no Mexican-American in the race, the Mexican-Americans tend to vote fro the most popular Democratic candidate, or usually the winner.

Q Did you make any findings as to the Republican Party and the voting pattern in that area as it relates to it?

A Well, we were restricted with respect to the Republican Party because they only had a-- they have only had one primary. But in the 1968 primary, a Republican by the name of Gonzales, who, by the way, is a Spanish surname, received thirty-four votes from the entire area. Harris, who was another Republican, received thirty-two votes for the entire area and Chamberlain, another Republican, received thirty-three votes. I might contrast that with the Democratic primary. That same Democratic primary where Place Number 1 received 11,780-- excuse me-- 11,780 votes were cast for three candidates. In other words, around 10,000 to 1.

Q Now, going on to another portion of your

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work, Mr. Korbel, did you do any work in relation to the cost of running a campaign in Bexar County?

A Yes, I did.

Q What is it you did-- you and the people working with you?

A Yes. We conducted a survey or a study of all expense data available. Now that is only for one election. That would be the 1970 election. Texas law, I guess, allows the county officials to throw away the election reports after two years. So we were restricted to the 1970 election expenses. My findings on that were as follows: The average winner in the 1970 election-- now this is excluding three unopposed candidates, because they were not required to file in the Bexar County offices. The average winner of a contested election spent $8,618.33 while the average loser spent $2,822.78.

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Questions by Mr. Idar:

Q Do you have any illustrations as to specific races there between the--

A Before I go on, I might point out that of the seven winners three were incumbents. And, this, I suppose, was because they were less known. So, this figure-- Yes, on the various races-- Mexican-Americans were found in four races. Robert Vale was unopposed, so we have no data on that race for Place Number 2. For Place Number 7, Fernando Pena, was opposed to Wayland Simmons and a Mr. West. Pena received-- Pena spent $2,241.00 while Simmons spent $7,364.35, West spent $2,560.00. In this case the Mexican-American candidate spent less than either of the Anglo candidates. For Place Number 8 Jose Chappa spent $5,462.00 as opposed to Nelson Wolfe's $10,054.50. For Place Number 6, Paul Silber, spent $16,620.00 as opposed to the Mexican-American, Frank Mata, $1,675.00.

Q Okay--

A With respect to gifts received by candidates in the 1970 election, again, for four places. Vale was unopposed so we have no data for Place Number 7. Pena received $1,066.00; Simmons received $6,958.28 and West

received four thousand-- excuse me-- West received $447.50. For Place Number 8, Chapa, received $2,300.00, Wolfe received $5,235.00.

Q All right, Mr. Korbel. Let me ask you one final question. Was there a portion of your study-- relating to the voting pattern now-- I am going to refer to the voting pattern of the area in green-- that is presently under way.

A Yes. Because of the press of time, you know, we haven't finished, well, what we feel is another study which we feel would be important to the Court, and that is a study of the voting patterns of a like area-- or a like area to this barrio area-- which would contain about seventy or eighty per cent Anglos. I ran a preliminary study to see what that would show-- what that study would show.

Q How many census tracts were involved, or precincts, on that preliminary study?

A I don't remember. I think I ran nine. I don't remember how many census tracts; I suppose it would be two or three in nine precincts.

Q Nine precincts.

A It shows the Anglos' tendency to vote overwhelmingly against Mexican-American surname candidates

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except in the general election where they tended to vote for the Democratic nominee, whoever he might be-- although in a somewhat smaller proportion than he voted for Anglo candidates.

Q Do you have any idea how much more time it would take to complete this portion of your study?

A I came up here yesterday, the clerks were working on it yesterday morning, I talked to them today and they were about half finished with it. I would think that by the end of the week we should be able to have a fairly substantial study on that finished, and we could have it available in memorandum form by probably Tuesday or Wednesday for sure.

MR. IDAR: In the light of that testimony, Your Honor, I would like to, if there is no objection, request leave of this Court to file a post-trial memorandum that would incorporate the findings of this last portion of our effort here that Mr. Korbel has just testified to. We would, of course, make it available to counsel on the other side and give them an opportunity to respond to it. We feel that we may be able to have this information ready by possibly Tuesday of next week. If we don't then, of course,

we will be precluded from filing.

JUDGE JUSTICE: Is there an objection?

MR. CURRY: Well, Your Honor, first of all, we would like to see it. If it is prepared and we don't have the opportunity to cross examine, there is not much we can do about whether or not we can contest it. If there is some way we could work with the gentleman and talk with him informally and satisfy ourselves, we would be more than happy to cooperate.

JUDGE GOLDBERG: Why don't you attempt to have a conference with him and see if you can agree on what technique he is using and point out to us tomorrow or the next day as to whether you can?

MR. CURRY: We will do it this evening, Your Honor.

MR. IDAR: Pass the witness, Your Honor.

JUDGE JUSTICE: Are there any other Plaintiffs' attorneys who wish to cross examine?

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CROSS EXAMINATION

Questions by Mr. Curry:

Q In connection with your studies, do I understand that these maps take in all of Bexar County?

A No, these maps take in only the contiguous--the contiguous, heavily populated census tracts located within Bexar County; that is to say they take in the San Antonio area.

Q And excludes the rest of the county?

A Yes. There wasn't any map big enough to give this much detail and include the rest of the county.

Q Did you make any attempt to determine the area of the senatorial districts on these maps?

A No. My study, because of the time that we had, was specifically limited to the State Legislature from 1880 to 1970.

Q And, nothing to do with the Senate?

A No. Actually, we went from 1860 to 1970, but that data would--

Q Did you make some additional findings regarding the Republicans? For instance, I will ask you how many Republicans ran for the House of Representatives

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in 1970?

A One Republican ran for the House of Representatives in 1970.

Q And, how many Democrats were unopposed?

A Seven Democrats were opposed in the primaries and nine Democrats were unopposed in the general election.

Q What was the result of the Republican election?

A The Republican received 29,240 votes; the Democrat who he opposed received 88,525 votes.

Q How many Republicans ran for the House of Representatives in 1968 from Bexar County?

A Five Republicans ran for the House of Representatives in 1968; five Democrats were unopposed.

Q All right. Did the Republicans win in 1968?

A No. No Republican has ever won from Bexar County as far as we could see.

Q As a matter of fact, they normally lose at least-- at least if I look at your figures you have provided me-- they lose a ratio of about three to two.

A It runs from three to one to three to two; that is what it appears to me.

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Q And, in 1966 how many Republicans ran for office from Bexar County?

A Only three Republicans ran for the House of Representatives in Bexar County.

Q That is out of ten places?

A Out of ten places, that is right. However, ten conservatives ran that year.

Q In 1964 how many Republicans ran for the seven places in Bexar County?

A Seven Republicans ran for the seven places in Bexar County in 1964.

Q Did they win any of those elections?

A No. None of the elections were won. No Republican has ever been elected to the legislature in Bexar County.

Q What is the largest vote received by a Republican in a primary election in Bexar County?

A It is 5,016 votes. However, there has only been one primary had by the Republicans within my study.

Q I believe you testified that no Republican has ever been elected to the Texas House of Representatives from San Antonio-- from Bexar County.

A My study indicates no Republican has ever

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been elected.

JUDGE JUSTICE: You are speaking of the House of Representatives only?

MR. CURRY: Yes, sir.

A That is what I am speaking about.

MR. CURRY: We have no further questions, Your Honor.

JUDGE JUSTICE: Is there any redirect?

MR. IDAR: No, sir, Your Honor.

JUDGE JUSTICE: In view of the progress that has been made it has been decided by the Court that there will not be a night session tomorrow night. However, in the event Thursday that it becomes necessary we will go into the night.

JUDGE GOLDBERG: To finish.

JUDGE WOOD: We will finish Thursday night.

JUDGE GOLDBERG: Attempt to finish.

JUDGE JUSTICE: We will commence proceedings tomorrow morning at 9:00 o'clock. The Court is adjourned.

ROY BARRERA, 55a

a witness called on behalf of the Defendants, having first been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. McDANIEL:

Q Would you state your name, please?

A Roy Barrera.

Q Mr. Barrera, where are you from, sir?

A San Antonio, Texas.

Q And would you tell us where you were raised, Mr. Barrera?

A In San Antonio, Texas.

Q Mr. Barrera, how old are you?

A Forty-five -- will be in a few days.

Q And what business or profession are you engaged in?

A I am a licensed practicing attorney in Bexar County.

Q How long have you been practicing law in Bexar County?

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A Since 1951.

Q In what part of Bexar County were you raised?

A On the west side of San Antonio.

Q Did you go to school on the west side of San Antonio?

A I did.

Q Do you still live on the west side of San Antonio?

A I do not.

Q Where do you live in San Antonio?

A In the northwestern portion of the county, just recently taken into the city limits. I had been living in the county, as such, for about ten years.

Q Mr. Barrera, is there a general tendency of Mexican-Americans who better their economic station in life to move out of the west side into better residential areas?

A I would say it is, yes, sir.

Q Have you been active in the past in politics in Bexar County?

A I have.

Q Would you tell the Court briefly some of your political activities?

A Well, it began in approximately 1949, '50, '51. I became involved in the School Board elections

initially as a concerned representation for the western section of the city when I was at St. Mary's University through Eluterio Escobar, who headed a School Improvement League, the efforts being made to better the lot of the schools on the west side, increase the size of the schools, the size of the play areas, playground equipment, to tear down older schools and to replace them with new.

It continued after I received my law degree and went into the District Attorney's Office under the late Austin Anderson in campaigns involving the District Attorney himself personally and in legislative races supported by the District Attorney, who, after his death was replaced by Hubert Green.

I took part in and continued to take part in those elections. I took part in senatorial races going back to Ozzie Lattimer when he was a State Senator and proceeding again to the legislative races, various and other sundry local and county races and sheriff's races, Presidential elections, Governors' elections that have taken place at the state level.

Q As a matter of fact, you have been on the School Board, have you not, of the Edgewood School District, which was involved in a rather landmark case here recently?

A Yes. I served on the School Board of the

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Edgewood School District from 1953 through 1959. I served as President of the Board for about four years, the latter four years.

Q And have you held political office yourself?

A I have, as an Assistant District Attorney, not an elective post, and as Secretary of State by appointment of Governor Connally.

Q Mr. Barrera, would you tell the Court, please, sort of a listing of people of Mexican-American ancestry who hold political office in San Antonio and Bexar County at this time, as you can recollect?

A Well, we have people on the various School Boards, the San Antonio Independent School District School Board. The President of that School Board is an elective post, a Mr. Richard Tenisnte.

Mr. Ralph Cardenas, I believe, is still on the Board. He's been on the Board for about 12 years by election.

We have the two main principal downtown Justices of the Peace in Precinct 1, Places 1 and 2. One is the Honorable James Gutierrez and the Honorable Mike Hernandez, both elected to posts by election contests, the last one being Mr. Mike Hernandez, who ran against the incumbent, Charles Bond, who had been a former

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Sheriff's Office candidate and quite well known.

Aside from that, we have the Honorable E. F. Garcia sitting as the County Judge, County Court-at-Law No. 2, who has held that position for approximately six years or so. He was initially appointed, thereafter stood for election, has not had any opposition, Republican or Democratic, from any sources.

We have the Honorable Judge, District Judge John Benavides of the 175th District Court, I believe. It is primarily a Criminal District Court by appointment of Governor Smith. He has stood for election without contest.

We have the Honorable Carlos Cadena, who is Associate Justice of the 4th Court of Civil Appeals, who was appointed by Governor Connally and has stood for election without opposition.

We have had for many years Constable Garcia -- I forget his last name (sic), Bob Garcia, over in the northeast section of Bexar County. He's held that post for 20 years.

I don't recall any other elective posts, other than, of course, the Ridgewood School District where primarily -- in fact, the entire Board is Mexican-American.

Q What about the obvious ones you are overlooking? What about your State Senators?

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A Well, of course, yes, at the state level we have the State Senator Joe Bernal, who runs in, of course, District 26, and we have the former legislators, Rudy Esquivel, who was defeated by Senator Joe Bernal for the Legislature.

Initially, we have had Johnnie Alines.

We had Robert Vale, who is still occupying that post.

Q Mr. Vale has what, I think, would normally be denominated an Anglo name. As I understand it, his father is Anglo and his mother is Mexican-American. Is that correct?

A Well, my understanding, of course, is that the name is not really Vale, although it is used that way for purposes of accommodation, but it is rather Vale' -- V-a-l-e -- and, of course, we have got our County Commissioner Albert Pena, who has served in that position for many years out of County Commissioners Precinct No. 1.

Q That includes the west side area?

A A portion of the west side. In fact, I dare say that it is just about evenly divided between west side and south side. He's got some south side precincts there that are composed of a large number of Anglo people.

Aside from that, in our city elections, of

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course, we have got -- we have had councilmen sitting on the City Council that have been of Mexican extraction, Dr. -- first of all, at its inception Henry B. Gonzalez, who is now our present Congressman, who is, of course, from San Antonio and Bexar County.

We have had Dr. San Martin. Of late, we have had Pete Torres, who was recently defeated, but who won in his own right, I believe, at least two terms.

We had Mr. George de la Garza, who left that post of his own volition due to a business transaction.

We have had Mr. Jose Olivarez, who also was elected by contest and left it voluntarily of his own volition due to press of business.

Presently we have on the Council the Honorable Gilbert Garza, Mr. Leo Mendoza, Mr. Trevino -- I don't recall who else.

(No omission here.)

Q At the present time, realizing this is a leading question, the City Council of San Antonio is made up, is it not, of three Mexican-Americans, one Negro and five Anglos, one of whom is a woman, is that correct?

A Correct.

Q Mr. Barrera, turning for a moment to the social and racial problems of San Antonio and Bexar County, generally has there been progress made in this area over the last 10 years or 20 years?

A Decidedly.

Q Let me get down, then, to the issue which I deem to be the one of most import to the Court in this case: does multi-member districting of the Legislative districts in Bexar County prevent the Mexican-American population in Bexar County from having a full and effective participation in the political processes in Bexar County?

A A full participation, yes. An effective participation, I would say, would depend entirely on the make-up of the candidates-elect.

Q Now, the percent or size, if you would prefer to say it that way, of the Mexican-American community in Bexar County as compared with, say, the

Anglo community?

A I would say that they are numerically just about even, possibly exceeded a little, by the Anglo. But, I believe, as I last recall, having looked at the figures, that the Mexican-American or Spanish-speaking population in Bexar County totals anywhere between 45 to 48 percent.

Q Insofar as participation in the political process in Bexar County is concerned, has the problem been more oriented to a difficulty in getting the people to participate or toward the particular system of representation used?

A I believe that one of our major problems in San Antonio, as in other communities, has been a lack of participation by our people. However, of course, this has been aided and abetted, to a great extent, and contributed to by other factors which I would certainly cite; among them being discriminatory practices that have been heretofore inherent in our election processes, yes.

Q Yes. Are those factors presently being removed?

A I would say that to a great extent, that they have been removed and are being removed.

Q Do you have any idea of what the

percentage -- of what percentage of the Mexican-American population in San Antonio is registered and does vote?

A I don't have the figures and I would just be estimating on past experience, but I would dare say that of the number of eligible voters that we have in Bexar County of Spanish-speaking, or Mexican-American extraction or Mexican-American, that I would say that about 30 percent of these might be registered.

Q Now, from my discussions with you, I take it one of your disagreements with the use of multi-member districting is the winner take all nature of that type of representation?

A Well, as I discussed with you yesterday, Mr. McDaniel, on a multi -- a multi-member district or a situation where you have members of that particular district running at large, you do have a situation where there are some people, whether it is of ideological difference or what, and ethnic difference, or a religious difference who are not going to have their viewpoint represented. By that, I mean simply this, as an example, supposing that you had a community consisting of say, four-fifths Protestants and one-fifth Catholic. Certainly, it would be obvious to me, to anyone interested in the outcome of an election, where this possibility might

be an issue, that the Protestants would have all of the representatives to be elected in that particular district as against none for the Catholics -- if such an issue were to arise. Consequently, if you have a population that is succeeded by one ethnic group, as against another, and if the differences between these two groups are brought to the front and the election is going to be determined or decided along the ethnic lines, then certainly the ethnic minority is not going to have its representatives elected.

It just goes without saying, as normal elections go, that does not happen.

Q Let me ask you a question at this point, realizing that there is a certain element of ethnicity -- or ethnicity, I should say -- connected with any political race in which candidates come from different ethnic background, has the tendency in San Antonio over the years -- and by "years", I mean the recent years at least -- been toward a cohesion of the society to determine things on the merits or has it been toward a device along racial lines?

A I have found this, whenever a candidate seeks to base his candidacy by an appeal to ethnic background, whether it is a majority group or a minority group, that the minority candidate is going to necessarily find that he is going to be short of votes when it is all over. If the appeal is based to qualification, to capability, to a determination to represent the people of the community as a whole, in whatever post a man seeks to be elected to, that this is lessened quite a bit. And, we have, of course, county-wide elections now of minority group representatives where it is not an issue and has not come to the fore and they have been elected.

Q And, speaking of practical politics, is it to the point in San Antonio where the ethnic groups are taken into consideration in political plans by everyone?

A Yes, I think that is more so now than it has been in the past. As a matter of necessity, we have found that oftentimes the majority group, or the establishment, or the powers that be, have seen fit, in the interest of harmony and in the interest of keeping this thing from developing along racial lines or appealing to ethnic background, they have seen fit to sit and to confer with and compromise with the various leaders of

the ethnic sections of the City. And, for example, have formed or comprised a ticket made up of so many Anglos, so many Mexican-Americans and so many Negroes in the interest again of appealing to, as a group, all sections of the City.

Q Now, when you say "we", there at the preface of that question --

A Yes.

Q -- I take it "we" was referring to not "we" as Mexicans, but "we" as citizens of Bexar County?

A That is correct.

Q All right. In Bexar County, in numbers at least, is it true to say that there is no majority ethnic group?

A As individual ethnic groups, yes, I would say that your Anglos certainly outnumber the Mexican-Americans. If you combine the Mexican-American and the Blacks, then possibly they might be outnumbered by the Mexican and the Black.

Q As a matter of fact, in our discussio though I questioned the accuracy of your figures about the Blacks in San Antonio --

A Yes.

Q -- my thinking was it was closer

to 10 and you to 20 percent. As a rule of thumb, you stated that typically considerations, in your mind, at least, in the past, had been 40-40-20?

A Yes. I have carried it along in that fashion, one, for practicality and the other of not worrying too much about the number, but moreso about the effort that is to be extended by any given election. But, I have generally accepted in my mind a 40-40-20 division as being one we are going to work with, whereas if -- and as we have had on occasion -- we have had a candidate run county-wide, we have, oh, I would say, as a Mexican-American, have had an occasion to combine the effort on the west side and the east side as against the candidate proposed by the Anglo.

Q The east side, referring to --

A The east side, referring to the Black, yes, sir. We have had occasion to form that combination. We have had occasion to form a combination of candidates agreed upon by all parties to where we have had occasion to form a ticket that was acceptable and salable to all parts of the County for all parts of the City, by, again, having the Anglo majority agree to the acceptance of Mexican-American representation on the ticket, to Negro or Black representation on the ticket

education. To that extent, and for that purpose, I have continued to remain involved and interested in the school board elections out there, teacher associations -- I have had occasion to go to the Edgewood District and to speak to parents, to students and teachers whenever the occasion arises. During my political efforts, I have had occasion to go down there to continue to become acquainted with the problems that prevail out there. Only yesterday I received a letter from a migrant worker, manager, who was proposing that I take up my candidacy against Senator Joe Bernal, who is a friend of mine -- without regard to whether I will or will not. But, I have remained in touch and I am aware of the problems that are out there and I do make an effort, time permitting, to remain involved and continue to be involved.

Q Is this awareness and this closeness typical of the Mexican-American in San Antonio who has managed to achieve economic means enough to move out of the west side?

A I would say that to a great extent, it is. It has got to be, because one thing that differentiates, in my opinion, a Mexican-American from possibly other nationalities, is that once you are a Mexican-American, you will always be one. You can't

in order that one cohesive cooperative effort might be made in all portions of the City or County to bring about the success of the election regarding the particular candidate proposed. Where we go on the west side, for example, and propose that the Anglo candidates who may be little known, or little cared for, necessarily in some sections on the west side, that they be voted for in view of the fact that on the other hand we have an agreement that on the north side, the Mexican-American candidates will be equally proposed, and made salable to the voters there, as also affects the Black voters and Black candidates we have had occasion to have. So, we have formed these combinations and they have been successful.

Q Mr. Barrera, do you feel that you still have close contact with, and a feeling for, the predominantly Mexican-American lower economic status group on the west side?

A I would say that the better part of my family members, cousins, uncles, relatives, still live on the west side. I speak Spanish, never have ceased to. I served on the Edgewood Board for 7 years, of course, without remuneration, because I feel primarily that our effort to better our situation in San Antonio and in other areas is going to have to come by way of an

get away from the customs, from the food, from the language, from the dress, from the music. Senator Joe Bernal lives on the north side. He, of course, is elected in the 26th District, which is primarily of Mexican-American. So, the fact that you remove yourself from a particular area doesn't necessarily make you anything other than what you have been.

Q The question I was driving at there, is it necessary for the Mexican-American, or for that matter, anyone else who is sympathetic to the problems of the west side of San Antonio, to live in that area, in order to effectively be concerned with it and represent the interests of the people there?

A No, sir. That is advanced sometimes by those people who seek to gain some advantage from it, politically. And, of course, it is a proper approach -- to say "Well, if he doesn't live here, how can he care about us?" But, that is not necessarily true. There are many of us who are politically motivated and inspired and that continue to remain involved and interested. There are others who are not politically connected; doctors, lawyers, Indian chiefs, who have nothing to do with the election process other than to possibly go vote. They remove themselves from an area, for the sake of

finding a better home in some other location, better land values, or whatever, who may never go back to the west side -- but not because they don't care for it. It is just because during the course of their lifetime, they don't have occasion to remain involved to that extent.

Q. Now, there are and there have been in the past, have there not, Anglo candidates and elected officials in San Antonio, who have had much of their voting base on the west side?

A No question about it, yes, sir.

MR. McDANIEL: I believe that is all I will ask at this time, Judge.

C. E. - Barrera

CROSS EXAMINATION

Questions by Mr. Idar:

MR. IDAR: I am going to use my copy if there is no objection. It is the same publication.

MR. CURRY: All right.

Q Mr. Barrera, you say you served in the Edgewood School District Board of Trustees?

A Yes, sir.

Q Is it true that is almost a one hundred per cent Mexican-American school district?

A Yes, sir.

Q Now, you mentioned that Mr. Richard Taniete is the president of the San Antonio Independent School District Board of Trustees?

A Yes, sir.

Q And did you also indicate that Mr. Ralph Cardenas and-- is it Cardenas you mentioned?

A Ralph Cardenas, yes, sir.

Q He is on the Board of Trustees?

A If he is not now it may be because he just recently retired, but I do know that he served on that board for at least ten, twelve or possibly even fifteen

years.

Q Do you know how many people constitute the Board of Trustees of that district?

A I don't have it in mind right now, but I believe it is nine.

Q And of those, how many are Mexican-Americans?

A I don't have that in mind.

Q Can you recall anybody other than Mr. Teniete?

A Yes, sir. Mr. Garcia-- Gus Garcia, during his lifetime.

Q Now, Gus Garcia served back in '48?

A Who serves now?

Q Yes.

A I don't recall. I believe there are one or two other members, but I couldn't--

Q --Would it be a fair assumption that there is not more than three out of the nine?

A I would say that is a fair assumption, yes, sir.

Q Would you agree with me that the San Antonio Independent School District-- I have a publication published by the U.S. Civil Rights Commission as hand, and I am going to ask a question--

C. S. - Barrera

A By whom?

Q The U. S. Civil Rights Commission.

A All right.

Q Well, you are welcome to look at this.

A I accept your statement. I just didn't catch the name.

Q Well, we have an extra copy so you can refer to that.

A All right.

Q If you will look at that chart up at the top of page 25, this reflects that in the San Antonio Independent School District, the total enrollment is 79,353 students. Of those, 21,310 are Anglo-American and the Anglo-American constitutes 26.9 per cent of the enrollment. The Mexican-Americans, in round numbers, are 46,188, and they constitute 58.2 per cent of the enrollment in that district. The other minorities which I would presume would include your Black, Indians and what have you-- principally the Black-- you would agree with me that apart from the Mexican-American and the Black, we don't have any other siginificant racial or ethnic minorities in San Antonio that is recognized? Maybe a few Japanese or Chinese?

A No, sir, I would not. We have a large

Lebanese population in San Antonio. We have a large Italian population in San Antonio. We have a substantial Jewish community in San Antonio.

Q Well, assuming we have what you are talking about, we do not have them concentrated in certain areas like you do the Mexican-Americans or the Black? In other words, haven't they been very well assimilated into the overall population of the city?

A I would say yes.

Q Anyway, continuing with this, the other minorities on this chart here, in round numbers, 11,855, with the per cent of the district enrollment being 14.9 per cent. Now, that is student enrollment and actually we all realize that as a rule, student enrollment may be generally somewhat higher than the round numbers when it comes to population-- adult, that is. But would it be-- would it be fair to assume that even as to the adult population, the San Antonio Independent School District, the geographical area that it covers, is predominantly minority, combining the Mexican-American and the Black?

A I don't know whether that would be a fair assumption or not. It well may be, but I am not aware of those figures.

Q Okay. Referring to page 24 from this

publication-- incidentally, do you have any quarrel with the figures that the commission has come out with?

A I am not aware of the figures at all.

Q I mean the ones we have just cited.

A Well, those that you have called to my attention, I don't necessarily quarrel with, no, sir.

Q All right. Over on page 24, about the middle of the first full paragraph on the left-hand corner there you will find the following language:

"Approximately 82,000 Mexican-Americans students, or better than ninety per cent of the Mexican-American enrollment, are in five predominantly Mexican-American school districts; Edgewood, Harlandale, San Antonio, South San Antonio and Southside. Sixty per cent of the Anglo public school pupils in the area are in the eight predominantly Anglo districts which surround the city. Six of these districts have enrollments which are more than eighty per cent Anglo."

From your knowledge of the city, long-time residence there, do you have any reason to question this conclusion that has been arrived at by the Civil Rights Commission?

A No, sir.

Q You mentioned a Mr. Ralph Cardenas?

A Yes, sir.

Q I don't recall-- he is one of the people you mentioned as on the Board of the San Antonio Independent School District?

A He is now or was until just recently.

Q All right. Now, you mentioned, I believe, Judge Benavides, who was appointed by Governor Smith.

A Yes, sir.

Q And I believe you said he has since then stood and been re-elected.

A Yes, sir. Without contest.

Q Would you agree with me that generally an incumbent has a tremendous advantage when he announces for public office, as a general rule?

A Yes. I would say generally that is correct. Particularly among the judges.

Q From your knowledge of San Antonio, do you think that Judge Benavides would have been elected to that office, assuming he had not initially been appointed for an unexpired term by Governor Connally?

A I have no reason to believe that he would not have been, no, sir.

Q Are you acquainted with the fact that Matt Garcia ran for district judge twice in San Antonio

and for Bexar County and was defeated twice?

A Yes, sir. But I am acquainted also with other factors that contributed to his defeat, sir, aside from the racial or ethnic balance that may exist there, yes, sir.

Q You are not alluding to the fact that Mr. Garcia may have conducted an ethnic type campaign?

A No, sir. I say there were other factors that contributed to his defeat both times, other than the ethnic majorities or minorities.

Q Judge Cadena also was initially appointed to the Fourth Court of Civil Appeals by Governor Connally?

A Yes, sir.

Q And has since run or stood for election and been elected?

A Without contest, yes, sir.

Q There again, as an incumbent?

A Yes, sir.

Q I believe you stated that Senator Joe Bernal's district is predominantly Mexican-American.

A I would so, yes, sir.

Q You made a reference in your testimony to the powers that be in San Antonio?

A Yes, sir.

Q What do you mean by that?

A The people who are in a position financially, politically, to make decisions and to influence other people around them.

Q Could you categorize these people as to economic lines?

A Well, I don't know necessarily their economic lines, other than substantially in any election, in order to influence it there must be money or you must have access to money.

Q And those are the type of people we are talking about?

A Well, not necessarily just that type. I say politically influential. People who employ other people, people who become involved civically in city-wide efforts, people who become acquainted with the community who wheel influence, whether it be political or civic or social. Religious influence is wheeled in San Antonio also quite effectively. It certainly is a part of it.

Q Mr. Barrera, I am going to refer to what has been introduced in evidence here as Plaintiffs' BI-1, and you will notice an area there that is outlined

in orange which has been identified as the west side of San Antonio. I realize you haven't had an opportunity to look at the streets or the geographical boundaries closely, but would you agree generally that that is your so-called west side or Mexican-American area of the city?

A Predominantly, yes, sir.

Q The testimony on the record shows the pins that you will see in this area are the people that have run for office from this area between 1960 and 1970. And of course it shows the same thing in the rest of the city. The colors indicate the speific years. Those that were actually elected, the pins have been blackened. Now, do you-- the testimony further showed that Mr. Rudy Esquivel, one of these pins in here, is the only one that had actually been elected from this area over this ten year period. Now, with that predicate in mind, let me ask you now, isn't it true that Senator Bernal, in his first race, ran against Rudy Esquivel and defeated him?

A That's correct.

Q Isn't it further true that in that particular race Senator Bernal was the choice of the people that you call the powers that be?

A I don't recall whether he was or was not.

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Again, in Mr. Esquivel's election, there were other factors, nonpolitical, that contributed to his defeat. Where Mr. Bernal's support may have come from at that time, I am not aware. They were both friends of mine and I stayed out of it.

Q Now, you referred to that fact that Mr. Vale-- I believe his father is Anglo?

A You said that. I am not aware of that.

Q I think the State asked you about that.

A I don't agree or disagree. As I understand, his name is Vale (Reporter's Note: Pronounced V-o-l-l-e-y), but pronounced Vale, from down in the Valley.

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BY MR. IDAR:

Q He has the fortitudinous circumstance of having a name that, for political purposes, can be pronounced both ways?

A That's correct.

Q English and Spanish?

A Yes, sir.

Q Do you think that might be a factor in his favor?

A It always helps when you can appeal to more than one group for whatever reason.

Q You also testified that Commissioner Albert Pena, Jr., is an office in San Antonio, and he was elected from a predominantly Mexican-American area?

A I would say so, yes, sir, although there is a large Anglo vote there.

Q That's right.

A In his area.

Q Would you agree with me that Commissioner Albert Pena perhaps, not just in San Antonio, but in the State of Texas as such is one of the most out-spoke Mexican-American leaders that we have in the state?

A Yes, sir, I would say so.

Q And that he has become involved apart from

his own interests in the Commissioners precinct that he represents, that he has become involved with the farm workers and their interests in improving their conditions?

That he has been involved in the Crystal City situation in the past trying to organize Mexican-Americans there to become effective politically?

A Yes, sir.

Q And that he has actually -- oh, I don't know -- I don't want to belabor the time of the Court, but really he is, perhaps, I would say from San Antonio the most liberal -- in fact, he has been labeled as an extreme leftist by some people, because of his advocacy of Mexican-American causes. Is that correct?

A I wouldn't say that he has been labeled an extreme leftist. If he has by some people, it is an extreme minority, because I don't consider him so.

Q Do you believe that Commissioner Pena with that type of background, if he was running county-wide, could be re-elected in Bexar County?

A I don't believe that Commissioner Pena would be elected county-wide but not necessarily for the reasons that you have indicated. They are all restricted to local Bexar County politics and the things that take place there that are peculiar to Bexar County.

Q Would you class some of his campaigns for re-election as having been conducted or aimed to appeal to the Mexican-American voting group in his precinct?

A Yes, sir.

Q That's what you were talking about a while back when you said sometimes minority candidates may be self-defeating themselves by using the ethnic factor?

A In county-wide races, yes. Now, if you have a particular block that is captive to your particular precinct or district---.

Q Right.

A ---and it is predominantly of one ethnic group, and you appeal to them as an ethnic group, you have got a cinch.

Q Now, Mr. Pete Torres, you mentioned, served two terms on the San Antonio City Council?

A Yes, sir.

Q Wasn't he also, as a member of that Council, a very outspoken individual?

A Yes, sir.

Q On issues that related to the Mexican-American population, to those in the lower economic segments and so forth?

A Yes, sir.

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Q And one of the factors that contributed to his defeat last year was the fact that he challenged the present Mayor, that is, that he issued a challange that he, Pete Torres, was going to seek to become the Mayor of San Antonio, and Mayor Gatty took him up on it and announced for the same place and defeated Mr. Torres?

A There were two factors, in my opinion, since you have asked for it, that defeated Mr. Torres.

One is, he slurred one of our prominent black leaders in San Antonio to where he incurred the wrath of the black community in San Antonio.

The other one, he opened his mouth just once too often and incurred the wrath of other people.

Q Including Congressman Henry Gonzalez?

A Yes, sir, decidedly, right, because he opened his mouth against Congressman Gonzalez also and slurred him.

Q And Congressman Gonzalez because of his incumbancy and the Congressional Committees that he serves on, particularly those dealing with the Military, in the light of the Military installations that we have in San Antonio, has managed to achieve a position of considerable power there in San Antonio?

A Representative Gonzalez in my opinion has

managed to reach a plateau of being able to represent all the citizens of his district fairly and impartially, and for that reason he has attained what he has attained.

Q And he came out against Pete Torres?

A Well, Pete Torres came out against him initially and slurred him, and, of course, politically he could expect retribution, and he got it.

Q All right. You stated that Gilbert Garza, Leo Mendoza and Mr. Trevino are present members of the San Antonio City Council?

A They are.

Q And were members of the particular slate that the Good Government League in San Antonio endorsed last year. Is that correct?

JUDGE JUSTICE: That the what league?

MR. IDAR: Good Government League.

A Yes, sir.

Q And were you familiar with the fact that Mr. Trevino at that time, I think, was the Mayor pro tem of San Antonio in the hope that the league would endorse him for the Mayorship?

A I don't know whether he had hoped that the league would endorse him or not. I don't know.

Q Isn't it true that it took Congressman

Gonzales's influence to get Mr. Trevino on the Good Government League ticket?

A That was rumored. Whether it was fact, I don't know. I wouldn't dispute it. I just don't know.

Q You testified that in your opinion multi-member districts prevent the population involved from a full participation in the political process?

A No, I said that I don't believe that they get as representative a representation as they might otherwise get with single member districts.

Q Do you know how long we have had multi-member districts for the San Antonio and Bexar County---?

A Frankly, I don't have any memory to the contrary, so I guess as long as I can recall. I may be in error, but I don't remember when we have not had them. Let's put it that way.

Q The piece of paper over here had another black area outlined in this part of the City, roughly, the way we are looking at it, roughly to the east of the orange area---.

A Would be black precincts, yes, sir.

Q Yes.

You also notice that although there have been a few candidates from that area, there has been nobody

elected.

Could you explain or give us some idea why it is that under multimember districts that apparently we have had in San Antonio -- we have never had any other type -- we haven't had but one person elected from this entire area involving Mexican-American, as well as the black concentration?

A Well, I believe that under any system you are still going to have to have people---.

JUDGE WOOD: One minute. Something has been injected into this case that I think you all should know. I was a charter member and organizing force of the Good Government League.

If that is going to become important, and I believe Mr. Barrera has worked with that league, with the Good Government League.

Isn't that right?

THE WITNESS: I have, Your Honor.

JUDGE WOOD: And I think we were both members of it. Is that important in this case?

MR. IDAR: Well, Your Honor, they are the ones that raised these issues, pointing

out some of the people that are on the City Council. I am sure that Mr. Barrera was not unaware---.

JUDGE WOOD: I mean as to whether I should recuse myself in this case.

MR. IDAR: I certainly would not request that or raise any objections to it.

JUDGE WOOD: Well, I just wanted to be sure that the record reflected in the open that, because I was a member, first, of the Citizens Committee which was the organization that originally raised the money to put in Council-Manager Government, and thereafter, we formed the Good Government League to broaden the base, and, of course, naturally, I have terminated any affiliation with that organization since I was appointed to the bench. I have no connection with the organization at this time, but I certainly wanted the record to reflect my prior connection with that if that is an issue in this case.

MR. IDAR: As far as the Plaintiffs are concerned, Your Honor, Your Honor, we have the highest respect for the Federal Judiciary.

'CE - Barrera

We are entirely aware of their independence once they ascend this bench, and I, for one, certainly am not about to call upon this Court to recuse yourself.

JUDGE WOOD: Well, I just wanted to make that disclosure in fairness to you.

MR. CURRY: The Defendants adopt the same position, Your Honor.

JUDGE GOLDBERG: That has to do with the same thing that I said yesterday about the Civil Rights Commission---.

MR. IDAR: Let me see.

Would you read my last question, please?

(PAUSE)

THE WITNESS: If I may, you were inquiring about why candidates had not been elected from those two areas.

REPORTER: (Reading) "Could you explain or give us some idea why it is that under multimember districts that apparently we have had in San Antonio -- we have never had any other type -- we haven't had but one person elected from this entire area involving Mexican-American, as well as the black concern-

tration?"

Q Yes. Can you give us any explanation why?

A Yes. I started to say one explanation is that regretfully but factually in those two areas there are not the number of people who make themselves available and stand for election to any post that is not going to be remunerative to the point where they can make their living from it.

By that I mean this, generally, the west side and the east side is composed of working people, people who work on a day-to-day basis, eight to five, who have jobs that they depend upon for a living. I don't know of any job that is less remunerative than a legislative post, so, as a consequence, (1) if a man was elected, chances are that he would find himself unable to discharge his duties and responsibilities to the post and to his family or to his own economic standing, for one.

Q Don't we have on the west side a Mr. Eloy Cantano, who is the owner of a series of supermarkets---?

A Yes, sir.

REPORTER: Who?

MR. IDAR: Eloy Cantano, E-l-o-y, C-a-n-t-a-n-o.

A That's correct.

Q Do you think he wouldn't be qualified to serve or able to?

A Without a doubt, but he doesn't live in that area. He lives on the north side.

Q But he has his business---?

A He has business, yes, as I have property on the west side.

Q Don't we have other business men in the area who could conceivably serve?

A No question.

Q All right.

A Business men, but they have not stood for election.

Q Now, assuming that we were to draw what I would term a neutral redistricting plan for the House of Representatives for Bexar County -- I mean a plan that is not particularly designed to give any one group a ready-made district from which to run, can you conceive that by drawing such a plan we could escape winding up with at least two or perhaps three single member districts that would encompass a good portion of those areas that I am talking about?

A I would say this, Mr. Idar, in response to that question, that certainly these areas would be entitled

per se to representation, that they would be able to elect candidates from those particular areas, such as they might be drawn, and certainly improve their ability to elect candidates. There is no question about that.

The next question that remains would be for them to get these candidates to run.

Q I realize that, but my question is, under a fairly drawn plan that is not aimed at giving any particular group a district, you could not avoid giving these tremendously large geographical areas of the city with the population concentration that they contain---?

A Yes.

Q ---there is no way that you could avoid even without realigning, three or perhaps four single member districts where a person living in at least one of the districts would have a fair chance at election?

A That is correct. There is no question about it.

Q All right. Now, assuming that that was to happen, would that encourage more candidates from each of those particular districts to announce to run?

A There have been any number of things that have taken place here lately that have encouraged candidates to run.

One, of course, is going to be, if it comes to pass, the taking away of the filing fee requirement.

The other is the poll tax payment requirement.

The other is that we have a more enlightened community now that has been exposed to the election process. Whether it would encourage more to run is a question again that is going to be dictated to these people by their economic circumstances. If there is someone within that area who is able to run, politically disposed to run, economically in a position to run and politically inclined, he will run and he will win, no question about it.

Q Are you acquainted with the fact that in last year's City Council election you had a slate of four or five people from that west side area---?

A Yes, sir.

Q ---termed the barrio slate?

A Yes, sir.

Q And, of course, the San Antonio City Council doesn't pay any salary, that is, the people serving there don't get paid any salary?

A $20.00 a meeting once a week.

Q Right, and it does require a considerable amount of time?

A Absolutely.

Q But you did have a slate from the barrio that announced---?

A Yes, sir.

Q ---for those positions?

A But none were elected.

Q Well, I realize that, but the point is, they did make an effort to run?

A Oh, yes, no question.

Q They were willing to serve if elected?

A Well, to the extent that they were able, because, you know, we have had people elected before, Mr. Idar, who, after having been elected, have found themselves economically unable to proceed and have given up the job.

Q Of course, we are speculating now as to whether these particular people would have been in the same boat.

A Well, I don't know.

Q All right.

A I know for certain that Mr. de la Garza, for one, resigned because of the press of economic business. Mr. — he's the owner of a hotel — prominent man there in San Antonio. I said his name while ago, and it

escapes me presently. He resigned and left the post.

Dr. San Martin said that because of---.

Q Mr. Barrera, I hate to cut you off. I want you to give your full answer, but try to confine yourself to my questions, please.

A All right.

Q You mentioned the filing fee, the poll tax, and did you mention the Voter Registration Statute that we now have?

A Yes, sir. Well, I meant that when I referred to the removal of the poll tax.

Q Is it true that in every one of those three cases those reforms have come about as a result of litigation? In other words, didn't the Federal Court set aside the poll tax requirements as unconstitutional?

A Yes, sir.

Q And isn't the question of the filing fee before the Courts now allegedly because it is unconstitutional?

A Yes, sir.

Q And the same thing with the Permanent Voter Registration Act that just went into---?

A Yes, sir.

Q That is a result of litigation, where the

Court held the prior statute to be unconstitutional?

A Yes, sir.

(No omission here.)

Cross - Barrera

Q You indicated one of the problems with the Mexican-American population was lack of participation in the political process -- a certain amount of apathy, I would imagine?

A Yes, sir. That is not peculiar to the west side. It is peculiar to the citizens, generally, but it effects us mostly because we are the ones who are suffering the most from it.

Q Assuming again that we had this fairly drawn plan, as a result of which we might have three or four single member districts with a good portion of the people in those two areas we have been talking about in each of those two districts, in your opinion, would that increase the interest and the awareness of those people in getting involved in the electoral process of the Texas House of Representatives?

A Again, possibly so. I can only call on my experience. When I served on the Edgewood District, in a predominantly 100 percent Mexican-American community in the school board elections, where there were nothing but Mexican-American candidates proposing their candidacy for such an election, we would come up with a total of 500 to 1000 votes in a school board election -- notwithstanding the efforts made to get the people out.

Q Well, of course, school board elections as a rule, unless you have a hotly contested issue, the electorate turns out in very minor portions regardless of whether it is in a Mexican-American district or any other district; isn't that generally true?

A Yes, sir. We are talking about interest in the election process.

Q You mentioned, also, here as to Catholics and Protestants?

A Yes.

Q Well, obviously none of us are advocating we set up a single member district for the Catholics or Protestants.

A No. I didn't mean to imply that.

Q These are disbursed all over the community. You have as many Catholics -- well, maybe not as many -- but you have Catholics in every section of San Antonio and they are not concentrated in any one area, are they?

A I say you have a larger concentration of Catholics on the west side than any other section of the City, yes.

Q We were speaking of -- or rather, you made reference to Senator Bernal in your testimony.

And, I would ask you whether or not in your opinion, Senator Bernal is now acquiring the reputation of being a fairly outspoken Mexican-American leader in San Antonio?

A Yes, sir.

Q Isn't it true that he refused, as a State Senator, to go along with the Governor in the appointment of an individual in San Antonio because he happened to be a member of a certain organization in that community?

A Two individuals, yes, sir.

Q All right, sir. And, his grounds for objecting to these people is the fact that that particular organization did not include, and never had, any membership of Mexican-Americans?

A That is correct.

Q Isn't it true that Senator Bernal also has been quite active in combating what is allegedly a problem of police brutality that present exists in San Antonio?

A I don't know that it exists. I know that there has been a discussion about it. I am not aware of the facts as to whether it does or not exist.

Q I used the word "allegedly". But, the point I am trying to establish, isn't it true that

Senator Bernal has come to the fore -- in fact, recently, didn't he take several alleged victims of police brutality before the District Attorney, the State Grand Jury and so forth?

A Yes, sir.

Q And, in other ways, the Senator has managed to become recognized as a Mexican-American leader?

A Yes, sir.

Q All right. My final question, Mr. Barrera, do you consider yourself as an outspoken Mexican-American leader in the same light as Albert Pena or Joe Bernal?

A We do not speak in the same way, but I speak as loudly as they do.

Q Have you spoken on any particular issues of direct concern to the Mexican-American?

A We don't take the same approach, Mr. Idar.

MR. IDAR: Thank you, sir.

MR. MCDANIEL: I have no further interrogation.

CROSS EXAMINATION

QUESTIONS BY MR. EASON:

Q Mr. Barrera, I am Nathan Eason from San Antonio. I believe you stated a moment ago that -- words to the effect that there was a better understanding between the various ethnic groups in San Antonio, more of a cohesiveness of getting along together. Is that correct?

A Yes, sir.

Q Now, you have pointed out a section of San Antonio which we refer to as the west side, which is predominantly Mexican-American. Would it be fair to say that there is a predominantly republican area in San Antonio?

A Yes, sir, the northeast section of the County.

Q All right. With reference to Exhibit BI-143, which was pointed out to you a while ago, would this be the area? (Indicating). Can you read these numbers?

A Yes.

Q Alamo Heights, Terrell Hills and the northeast part?

Cross - Barrera 600

A Yes, sir, the precincts in the 300 range.

Q All right, sir. That would be specifically there? (Indicating). Also, would it be also true of some entirely across the northeast --

A The northeast portion of Bexar County, the extreme northeast portion, yes, sir.

Q Thank you, sir. Now, it has been testified to in this case that the Republicans have never won a legislative race in Bexar County; would this be true as far as you can recall in your political activities?

A I would say that is correct, yes.

Q But, of course, we do have the members running at large for the Legislature?

A Yes, sir.

Q You stated a moment ago, I believe, on examination from Mr. McDaniel, that you personally favored single member districts?

A Yes, sir.

Q Would you care to tell us your reasons for this, please?

A Well, I believe that without regard to the people involved necessarily, but just that I believe that single member districts would be more

representative of the people in the particular district. In other words, that everyone in the County would have a representative, good, bad or indifferent, that would represent them.

Q Well, would it be fair to say that the representative himself wouldknow his constituency better and the constituency would know their legislator better?

A Yes, sir, I would certainly think so.

Q So, there would be more of a community of interest between the constituency as individuals?

A Yes, sir.

Q All right, sir. Now, while you have testified that a Republican has never won a race for the State Legislature, this area that you pointed out in the 300 block -- I believe those are voting precincts, are they not?

A Yes, sir, these are voting precincts.

Q In the voting precincts, would you say, from your experience in politics in Bexar County, that in a national election that the Republicans would carry this area in San Antonio? (Indicating).

A That particular area?

Q Yes, sir.

A Yes, sir, I would think so.

Q Now, bearing in mind that you say that there has been action in San Antonio and Bexar County in which the different ethnic groups have tended to come together and understand each other, would you say that there would be more of a community of interest between the people, say, of northeast San Antonio and a balance of San Antonio and Bexar County, or a section which combined the northeast section of San Antonio with Starr, Jim Hogg, Duval and Zapata Counties? Would you have an opinion on that?

A I would say they would be slightly out-numbered by Democrats. The interest certainly would be at variance, as I see it in my opinion.

Q Between northeast San Antonio and --

A And there is no question about it in my mind.

Q And, that would be political, is that correct?

A Yes, sir.

Q And, would it be economic?

A Economic.

Q State, Mr. Barrera, if you know, whether or not this section of San Antonio we are referring to -- what you identify as a Republican section -- has a Democratic or Republican J.P. out there?

A They have a Republican J.P.

Q Do they have a Republican or Democrat County Commissioner?

A They have a Republican County Commissioner, Commissioner Vaughn.

Q All right. Mr. Barrera, now, how many County Commissioners do we have in Bexar County?

A Four.

Q And, how many Mexican-Americans are on that?

A One.

Q And, that would be Albert Pena, is that correct?

A That is correct, Precinct 1.

Q I believe you pointed out roughly as a guideline, that the Republicans -- strike that -- that the Anglos and the Mexican-Americans roughly had about the same percentage?

A I would say I believe they are exceeded a little by the Anglo, but they are running

pretty close.

Q All right. Prior to Albert Pena, was there ever a Mexican-American Justice of the Peace -- no -- County Commissioner in San Antonio, in Bexar County, if you recall?

A Not within my memory. Callaghan again, with the name that he had, -- but knowing his ancestry -- may have been a County Commissioner way back, but I am not too sure of that. I knew we had Johnny Ogden, but again, he was a Mexican with an Irish name, so that helped.

Q Mr. Barrera, has there ever been a Republican Congressman -- I am sorry -- a Mexican Congressman from San Antonio prior to Henry B. Gonzalez, as far as you know?

A No, sir.

Q Was there ever a Mexican State Senator from San Antonio prior to Joe Bernal and Henry Gonzalez?

A Henry Gonzalez was the first one, to my knowledge, unless we go way back to the early days of Texas.

Q I believe you pointed out a while ago that Judge Cadena, of the Court of Civil Appeals, of

course, was appointed by Governor Connally and has since succeeded himself uncontested?

A Yes, sir.

Q There are three men on this Court, is that correct?

A That is correct.

Q Did you ever know of another Mexican-American that ever held that position?

A No, sir.

Q When is the last time that you recall that there has been a contested race for the Court of Civil Appeals in San Antonio?

A The last election, when Judge Charles Grace ran against Judge Klingeman.

Q I forget about that. But, before that?

A Before that, I don't recall.

Q It is rarely contested?

A Yes, sir.

Q Is this correct?

A Yes, sir.

Q Now, I believe you stated that Judge Johnny Benavides -- like you, I don't remember the number of the Court -- but he is a District Judge, State

District Judge in San Antonio?

A That is correct.

Q Now, how many District Courts do we have in San Antonio?

A We have got about --

Q About a dozen?

A Yes, about 10 or 11 now.

Q I believe there are 11, Mr. Barrera. Now, there is no other Mexican-American sitting on the bench in San Antonio?

A No, sir.

Q Do you ever recall another one prior to Judge Benavides?

A Judge Benavides was the first one.

Q Yes, sir. Now, in the County Courts, including the Probate Court and the County Civil Court at Law, and the three County Courts at Law, I believe this is correct --

A That is correct.

Q -- Judge Hippo Garcia is on the County Court at Law Number 2 bench?

A That is correct.

Q Has there ever been, to your knowledge, a Mexican-American sitting on any of those

benches?

A No, sir, other than Judge Garcia.

Q And, you referred to -- I am sorry. I am not sure if it is Judge Hernandez --

A Judge Mike Hernandez.

Q On the two local downtown -- place 1 --

A And Judge Gutierrez.

Q And Judge Gutierrez.

A Yes, sir.

Q Place 1, J. P. benches. Now, of course, the Precinct 1 is where they come from, is that correct?

A That is correct.

Q It is place 1 and place 2 of precinct 1?

A That is correct.

Q Would you tell us roughly what Precinct 1 involves?

A Precinct 1 involves roughly the old city limits of San Antonio, and they stretched at that time as far as 24th Street. It is primarily, I would say, what is now the heart of San Antonio -- it is downtown.

Q Sort of the old core City?

A Yes.

Q And, this would be predominantly Latin American?

A It would be now, in my opinion.

Q Yes, sir. And, before that, I believe you said Judge Ogden, who enjoyed this -- not unique -- but having a Mexican background?

A It is getting less unique, but it was at that time.

Q Yes, sir.

MR. EASON: I believe that is all.

JUDGE GOLDBERG: Any other questions?

MR. CROUCH: Your Honor, I have a couple of questions.

CROSS EXAMINATION

QUESTIONS BY MR. CROUCH:

Q I would just like to ask one clarifying question. Is it true that in San Antonio a

Justice of the Peace, County Commissioners, the Congressman, and the State Senators are elected from single member districts?

A Yes, sir.

MR. CROUCH: Fine. Thank you.

JUDGE GOLDBERG: I would like to ask one question.

QUESTIONS BY JUDGE GOLDBERG:

Q In the setting up of the single member districts, enumerate, if you will, the ingredients and the elements that must go in on the determination of those districts.

A Well, the Court is asking for my opinion, and I would say --

Q You qualify as an expert, Mr. Barrera.

A All right. I would say that certainly they should encompass population, primarily.

Q Equality of population, you mean?

A Yes, sir.

Q All right.

A And, frankly, just taking a line and sweeping it around the County and just let it fall where it may, population-wise, depending on the number

Questions by Judge Goldberg: 610

of legislators to be assigned to Bexar County, and just sweep around Bexar County and let the lines fall where they might, population-wise.

JUDGE GOLDBERG: Thank you.

JUDGE WOOD: You wouldn't try to make any particular -- put any emphasis on including ethnic groups in any one district, would you, Mr. Barrera?

A Well, Judge, I would not for this reason: that we are talking primarily about the Black, the Mexican-American and the Anglo and ignoring completely again, the Jewish population that is in San Antonio, ignoring the Lebanese population and the Italian population. We would be in Court again from their standpoint saying their particular part of town were not taken into consideration. And, I think that it would fairly give everybody the representation that they seek if these lines were drawn according to population in one giant sweep around the County.

JUDGE GOLDBERG: Have you studied the Senatorial District involving Bexar County?

A Only to the extent, Your Honor, of having recommended to the Redistricting Board that Judge -- I mean that Senator Bernal's district, District 26, be

left essentially as it was and as 611
he proposed it. He wrote the letter to me asking if I would recommend to the Redistricting Board that his District be left alone. I felt at that time, still do under the circumstances, that the West side of San Antonio needs a voice in the Senate; that the population of Mexican-Americans in San Antonio, as such, -- that it rates and wants someone who is attuned, particularly to the needs and the problems that exist there. I think that Senator Bernal is tuned to those problems and has been a voice for them. I think it precludes other problems. I know what has happened up in the eastern part of the County insofar as the Republican precincts are concerned; I am not too sure that that was the right thing to do. Of course, again numerically and mathematically, I didn't take part in it, so I don't know what the other solutions would be.

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JUDGE GOLDBERG: You mean with respect to going these counties?

A Yes, sir. I don't think that there is any similarity of the people living in those areas at all.

JUDGE WOOD: You are speaking of 19 and 21?

A Yes, sir. 19 and 21.

JUDGE WOOD: Senatorial districts 19 and 21. Now, are you familiar with the outlines of those two senatorial districts, Mr. Barrera?

A Only vaguely as is now proposed, and which has brought this litigation. Up to that point I have been interested primarily in 26. I am aware that Precinct 26 or that District 26, in which I am living and a resident of, is Senator Bernal's district.

JUDGE WOOD: What fault do you find, if any, with senatorial districts 19, 21 and 26, evaluating them all three as far as you understand?

A 26, I find none, and I forget which-- whether it is 19 or 21-- but the district that is now comprised of a portion of Bexar County, the northeast portion of Bexar County and extending down to the border, I think that it is not truly representative of the people

in that area. The community of interest, economic and social and political, are just--

JUDGE WOOD: --Would you have some plan for changing that?

A No. I say I don't have the solution because I have not been exposed to it to the extent of looking for a solution, so I don't quarrel with the people who drew it up that way. It may be that is the only way to draw it up.

JUDGE WOOD: That's all I have.

JUDGE GOLDBERG: That's all.

MR. EASON: Could I ask one more question, please, in light of what has been brought up?

BY MR. EASON:

Q Mr. Barrera, I believe you stated that Mr. Vale was the only Mexican-American elected from Bexar County to the legislature at this time?

A Yes, sir.

Q And there are no Republicans elected?

A Not to my knowledge, no, sir.

Q Now, using the plan that you described of drawing it up in single-member districts and letting it fall where it may, do you have an opinion as to how many Mexican-Americans and how many Republicans might be

C. E. - Barrera

elected to the Texas Legislature from Bexar County?

A Just very roughly, and taking into consideration the number of representatives that we have, I would say that the west side would possibly draw about three; that the northeast Bexar County might get about one or two-- one and a half to two.

Q Thank you.

JUDGE JUSTICE: Next witness?

JUDGE WOOD: I am sorry we had to take you away from the case with Judge Suttle.

A Thank you.

JUDGE JUSTICE: Do you desire to call your next witness out of turn?

MR. McDANIEL: Yes, sir. Thank you, Mr. Barrera. We express our gratitude for having you come. I call Mr. Gilbert Garza.

GILBERT GARZA,

a witness called by the Defendant, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

D. E. - Garza

DIRECT EXAMINATION

Questions by Mr. McDaniel:

Q Would you state your name, please?

A My name is Gilbert Garza.

Q And Mr. Garza, where were you raised, sir?

A In San Antonio.

Q Whereabouts in San Antonio?

A I guess you could call it the area that is now known at Model Cities Area.

JUDGE JUSTICE: Now known as what?

JUDGE WOOD: Model Cities.

A Model Cities Area.

Q It is over on what you have referred to, if you have been sitting there for a few moments, as the west side, is it not?

A It is the northwest. Northwest area of the Model Cities Area.

Q Do your parents still live there?

A Yes, they do.

Q Where did your parents come from, Mr. Garza?

A From two small towns close to Monterrey, Mexico.

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Q Do your parents speak English?

A One does; the other one still does not.

Q What is the economic circumstances of your parents?

A I would probably place them in the poverty area at this time. My father-- there were only two children; just my brother and I and my mother. I imagine my father has really never made over maybe $3,000.00 a year which would place them in this category at this time.

Q Do you feel-- do you live-- where do you live?

A When I got married approximately twenty-three years ago I moved out of the area but only two blocks north and still live fairly close to my mother and father.

Q Do you feel like you still have ties to this area?

A Very definitely.

Q What education have you had, Mr. Garza?

A High school education.

Q Have you had any technical training?

A Yes. In architecture.

Q Are you a licensed architect?

D. E. - Garza

A Yes, I am.

Q And how long have you been an architect?

A Since 1963. I took my exam here in Austin and passed it.

Q Where do you office in San Antonio?

A In the Tower Life Building.

Q Are you one of the partners in the firm?

A Yes, I am.

Q What is your firm name?

A CGR; Cerna, Garza and Raba, Incorporated.

Q When did you first become-- well, let me first ask, are you interested in politics?

A Very definitely.

Q When did you first become interested in politics?

A I guess about 1960. I joined an organization that is very active civically, which is LULAC. After I was there six months I became its president and I was president for two years in '62 and '63. Well, '61-'62 and '62-'63. And I became interested in politics, although the organization is a nonpolitical organization. It has still got to be interested in civic affairs.

Q Are you still active in LULAC?

A Not as active as I would like to be. I am

D. E. - Garza

still a member.

Q Have you formed other associations for political reasons?

A Yes, I have. I have been a member of the Good Government League for about ten years.

Q Would you explain for members of the Court who are not familiar with San Antonio and Bexar County, generally what the Good Government League is in San Antonio?

A It is a nonpartisan political group. The reason I say nonpartisan is because it has members of both parties. My wife is a Republican and I am a Democrat, for example. We are nonpartisan. But it is an organization that was formed some fifteen years or sixteen years ago to bring the manager-mayor form of government or mayor-manager form of government to San Antonio, and it has been to some degree very successful in the past fifteen years.

Q Is its composition ethnically nonpartisan also?

A It has no restriction whatsoever as far as ethnic.

Q Have you in the past, or do you now hold any political office?

D. E. - Garza 619

A I hold an office now. I am a city councilman there in San Antonio.

Q When were you elected to the City Council?

A In April of last year.

Q Now, in the City Council race, the Good Government League runs a slate, does it not?

A Only to the extent that it gets involved during election time, but at least this is what I have found since I have been on the council, that once you become elected, you are pretty well much on your own.

Q Is the whole council at this time composed of people endorsed by the Good Government League or are there some other council who are not?

A All the council members at this time are-- were endorsed by the Good Government League.

Q In the last election, were they?

A In the last election, yes, sir.

Q Prior council, was it all Good Government League or were there some that were not?

A No. There were two out of the nine. I ran against one of the incumbents, one-term incumbents.

Q Who did you run against?

A Dr. Ford Nielsen.

Q Who was the other incumbent who was not

a member?

A Pete Torres.

Q Who ran against him?

A Mayor Gatti ran against Pete Torres and I ran against Dr. Nielson.

Q How was it decided, if you know, who should run against whom?

A Well, I think I pretty well decided to run against Dr. Nielson quite some time before the election. And I think I made my mind up to run for City Council about eight months prior to the election and I just started working toward that end. I felt I had a good chance against Dr. Nielson.

Q And did you feel that Mr. Gatti had a good chance against Mr. Torres?

A No, not really. It was a fairly tight race, as far as I could see.

Q And in that type race in San Antonio, I take it you defeated Mr. Nielson who was an Anglo, was he not?

A Yes, sir. That's correct.

Q And Mr. Gatti, who is an Anglo, defeated Mr. Torres, who was a Mexican?

A Mexican-American, yes.

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D. E. - Garza

Q What, in your judgment, wins elections in San Antonio in Bexar County?

A Well, I think you have to be practical about the thing an generally, exposure means a great deal. For example, I think in the first race-- I was in a runoff with Dr. Nielsen, there with Dr. Nielsen, the incumbent, and two other candidates-- Mexican-American candidates in the same race I was in. I think that the exposure that I had, particularly, having been a complete unknown up until I ran, had a lot to do with it. And really when you really come down to it, it is a question of financial capabilities to become known in a particular area where you are unknown.

RE - Garza

Q Would you say then that it is fair to say that regardless of race -- I'm talking about political race now -- and regardless of whether single member districts or multimember districts are used, and I am referring now to City Council, as well as State Legislature, because I understand there is some movement afoot in San Antonio to break the Council into single member districts, rather than at large, too. Is that correct?

A Yes.

Q Would you say that in either type of race that the better financed candidate has an advantage?

A Yes, I would say so. I would say that single member districts would insure, of course, certain ethnic balance, if this is what we are trying to achieve, in Bexar County, but really, when we start talking about discrimination, really, I think the Republicans are probably more discriminated against in San Antonio.

Q Now, if you had single member districts in Bexar County, I take it from what you said, that as far as political philosophy and everything is concerned, that the people who have money would still back their respective political beliefs, regardless of whether they were in an area---?

A I think so.

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Q ---where both sides were backing---?

A If you had single member districts, for example, on the west side, I think there is still enough differences of opinion among men that there would be two candidates opposing each other for a particular slot in any area that you may happen to delineate, and if they run on a particular ticket, the better financed ticket, of course, is going to have a better chance to win in that particular district. I think that this has been proven in the past in many races.

Q Were you in the courtroom when Mr. Barrera was giving most of his testimony?

A Most of it. I was absent at the very first part.

Q Do you agree with his testimony that interests or conversely apathy is one of the major political problems of the Mexican-American in San Antonio?

A I would have to agree with that. I want to say this, because I heard the statement made about the San Antonio Independent School District, and I ran for the San Antonio Independent School District some eight years ago, maybe seven.

At that time, even with a large majority of Mexican-Americans in that district, and I think Mr. Idar

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made that point, there were only 2,500 people voting in the election. You could almost say that only the teachers and the administrators, because that is approximately how many teachers and administrators there are in the district. Probably those are the people who decided the election for the San Antonio Independent School District.

Q Do you agree with them also that there would be problems, insofar as finding candidates who, because of interest and economic ability, would be able to hold office in the west side?

A No, I disagree with him there, Mr. McDaniel. I think you could find candidates in any part of the city, whether they could survive on whatever remuneration they got from the political office or public office, of course, is purely conjecture.

Q Mr. Garza, do you feel that the Mexican-American in San Antonio has the opportunity, even under multimember districts, to have a full and effective voice in San Antonio and Bexar County politics?

A I think they have the opportunity, but it is rather restrictive with the multi type district.

As I said previously, I think there are -- single member districts have been proven over the country in your senatorial races, for example, as far as the

DE - Garza 62b

Government is concerned, the U. S. Government. Senatorial districts for the state, et cetera, et cetera, but if we are just talking about having an opportunity, I think there is an opportunity, but whether it is a full opportunity or not, it is kind of questionable.

Q All right. Do you agree with Mr. Barrera that the Anglo and Mexican-American population -- which I might say to the Court -- I detest both terms and also Afro-Americans. We are either Americans or we are not, one of the two -- are approximately of equal size in San Antonio?

A In population?

Q Yes.

A I would -- I was under the assumption that Mexican-American was a little larger in the majority, as far as population is concerned. Of course, I may be wrong.

Q I had Mr. Barrera affirm the composition of the present City Council in San Antonio.

Would you tell the Court, please, in your City Council election which candidate led your ticket?

A Dr. Billiard.

Q And of what particular ethnic group is Dr. Billiard?

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A He is a black.

Q Which perhaps goes to illustrate, does it not, that he had an appeal to both Anglo and Mexican---?

A Well, let me say---.

Q ---which was equal?

A Let me say that he did run with the ticket, and this has a certain amount of appeal.

Q Do you feel that either the Mexican-American or the Anglo-American vote on purely ethnic background in San Antonio?

A I think certain ethnic groups do. I wouldn't say the majority of the people do this.

Q You mean certain people in each ethnic group?

A In each ethnic group, yes.

Q Do you have any particular basis in mind for your opinion that a certain element of each ethnic group does, and another element of it does not?

A I didn't understand the question.

Q Do you have any experiences of your own which would indicate to you that, say, Anglo-Americans will vote for Mexican-American candidates or vice versa?

A Well, I think I have to look at my own race in this last city election and could pretty well tell

you that my support came from the north side, approximately 60 boxes out of the north side, and, here again, I have to say that I concentrated on these 60 boxes.

Q By work and money, you mean?

A By work and money and energy, primarily, because Dr. Neilson was fairly strong on the west side of town and on the east side of town.

Q The areas you are referring to that Dr. Neilson was strong in are predominantly Mexican-American and Black?

A And black. However, on the runoff I concentrated, once I saw the total picture, then I concentrated on most of the city, and I only lost 28 out of 227 boxes.

Q Would you consider your race a practical illustration of practical politics in San Antonio?

A You could do that if you wanted to.

MR. McDANIEL: Thank you very much.

CROSS-EXAMINATION

BY MR. IDAR:

Q Isn't it true, Mr. Garza, that as far as

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the San Antonio City Council race last year that there were a number of factors, a number of personalities, that resulted in the outcome?

A Yes, sir, that is correct.

Q That a very strong effort was made by the Good Government League to get rid of the two thorns in their side, Pete Torres and Dr. Neilson?

A No question about it.

Q And that you were a beneficiary of the people that were supporting the league to a very large extent?

A I think we all were.

Q Are you familiar at all with the campaign expense reports that were filed by yourself and the other candidates?

A To some degree, yes, sir.

Q Let me ask you if you are familiar with this figure. A report was filed on March 29 with your City Clerk, I believe. I believe this was preliminary to the first election, reflecting the fact that the league had spent $81,647.99.

Would you agree that that is a fact?

A That is substantially true, yes, sir.

Q A subsequent report after the election was

filed on April 16, reflecting the fact that another $40,666.21 was spent. Is that correct?

A That is about correct, yes, sir.

Q Finally, another report was filed in connection with your race against Dr. Neilson in the runoff, reflecting the fact that $30,111.64 were spent?

A That's about right.

Q And the grand total of expenditure by the league in both elections, supporting the nine people on its ticket, came to $152,425.84. Is that correct?

A That is about right, sir.

Q Now, you are aware that certain barrio candidates -- they term themselves barrio candidates or candidates of the slum, in effect, from the west side, ran?

A Yes, sir, I had one candidate in my race.

Q They filed an expense report, reflecting the fact that they spent $6,502.60.

A How much, sir?

Q $6,502.60. Do you have any reason to quarrel with the accuracy of that?

A No, I wouldn't quarrel with that.

Q You stated earlier that you certainly mounted a strong effort and had quite a bit of support -- would you agree with me that this type of financial support

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certainly was a tremendous factor in your election, as well as that of the other candidates of the Good Government League slate?

A I think I made that point from the very beginning.

Q Yes.

A That it is very vital in any election.

Q Now, in Bexar County getting your name known, whether it is for City Council or for any other county-wide race, county office, county judge, or House of Representatives in the case before this Court, exposure, I think you mentioned was a big factor?

A Exposure.

Q That means the use of radio, television and newspaper advertising?

A Primarily television.

Q All right. Going back to the reports that the Good Government League filed, the first report of March 29 reflects the fact that of the eighty-one thousand-odd dollars spent $65,739.65 were spent for publicity. Is that correct?

A That sounds about right.

Q And the second report, out of the 40-odd thousand dollars spent $36,934.91 was spent for publicity?

A Uh-huh.

Q That is correct?

A About right.

Q And finally, on the third report out of the $30,000.00, $25,661.53 were spent for publicity?

A Which bears out what I have been saying.

Q Exactly.

A Yes.

Q I just wanted the record to reflect the actual figures.

Now, assuming that you had single member districts in San Antonio that would encompass a total population of somewhere around 74,000 people and probably not over 35,000 of those actually people registered to vote, do you think that type of expenditure would be required by any candidate to have a fair opportunity to run in such an area?

A I don't think that that type of expenditure would be necessary for single member districts, but this does not preclude that that much money would be spent.

Q Right, and you could still have a well-financed, well-organized group of powers that be in the community to raise that kind of money for their candidates?

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A This is the point.

Q But wouldn't this type of system give the opportunity for most people who are actually living within those districts that are not within this power block to have an opportunity to run their candidates and have a fair chance of electing them?

A I think I have said that before, yes, sir.

Q Wouldn't you almost be able to canvass this district house to house?

A No question about it.

Q And wouldn't need the radio, newspaper and television exposure, would you?

A Probably.

Q Do you believe in the concept that that Government is best which is closest to the people?

A No question about it.

Q Would that be true of the single member district in contrast to the multimember district that we now have?

A I think that single member district does bring people closer to its representatives.

Q I believe that some people of my staff contacted you and other members of the City Council several months ago when we were seeking to obtain your views as to

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whether you believed that the San Antonio City Council should be elected on a single member district basis.

A Yes.

Q Do you recall that Miss Gloria Cabrerra talked with you?

A That is correct.

Q And do you recall indicating to Miss Cabrerra that you did believe in that concept for the City Council?

A And I still do.

Q Do you think that the -- would you have the same belief in relation to the Texas House of Representatives?

A I think that single member districts would probably---.

MR. IDAR: Thank you, sir.

THE WITNESS: ---work better, as far as the Legislature is concerned.

CROSS-EXAMINATION

BY MR. EASON:

Q Nathan Eason of San Antonio.

Mr. Garza, you do favor the single member district system. Is this true?

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A I think I do, yes, sir.

Q Of the 11 legislators in San Antonio there is one Mexican-American that is presently serving Bexar County in the Legislature. Is this correct?

A Yes, sir.

Q And I believe you stated your wife is a Republican. Do you know of any Republicans in the State Legislature?

A None at all.

Q Do you know of any who have ever been elected from Bexar County?

A No, sir, I can't think of any.

Q Do you have any opinion as to how many Republicans would be elected and how many Mexican-Americans would be elected should we divide Bexar County into single member districts?

A If we generaline about Mexican-Americans and Republicans, I think that probably generally we would probably talk about maybe three Mexican-Americans, possibly two Republicans, maybe three.

Q Yes, sir. Now, you were in the courtroom when Mr. Barrera testified, were you not?

A Yes, sir.

Q I don't know whether you can see this map or

not, but Mr. Barrera indicated this area in here around Alamo Heights and Terrell Hills (indicating) was generally regarded as a Republican stronghold or as Republican territory.

Now, in your interests in the activities of politics, as you stated a while ago, have you formed an opinion as to whether or not there is an identifiable Republican area in San Antonio and Bexar County?

A Yes, sir. I think that you can say the Northeast is identified more as a conservative area.

Q Yes, sir. Perhaps that is a good definition, but the people in this area are conservative. Is this correct?

A Yes, sir, they are conservative.

Q Now, in Senatorial District 21 are you familiar with the two districts that are wholly within -- under the new plan adopted by the Board the two districts which are wholly within Bexar County and the one which takes in about a hundred ten thousand people from Bexar County and incorporates it with the lower---.

A The Rio Grande Valley?

Q Sir?

A The Rio Grande Valley?

Q Well, let me hand you -- I believe I have it

here---.

Now, this is part of the plan as adopted by the Board on October 19th, and I understand it has already been admitted into evidence by the stipulations in the Pretrial, and the thing that I am looking at principally now and would like to show the witness is the Legislative Redistricting Board plan as it affects the Senate Districts in the State of Texas and also the one -- that portion which is blown up of Bexar County.

Mr. Garza, I am speaking specifically about Senatorial District 21, 26 and 19.

Have you seen this plan before (indicating)?

A No, I have not. I was familiar with District 26, because that is the district I live in.

(No omission here.)

Q And, that is Senator Bernal's district?

A Senator Bernal's district.

Q And, Senator Kothmann presently represents District 19?

A 19, that is correct.

Q And 21 is made up roughly of that portion of Senator Wayne Connally's district, plus it has been changed to some degree?

A Yes, sir.

Q Now, would you have an opinion -- I am going to show you the next page which blows up Bexar County. Now, this is 26, or Senator Bernal's District, down in the southeastern portion -- this which seems to be almost half the County is Senator Kothmann's district and this fringer area laying to the west in the county and coming to the north of the County and coming into the northeast part of the City proper, around Alamo Heights, Terrell Hills and this area, is proposed District 21. So, this area in Alamo Heights, Terrell Hills, would then be embodied with Starr, Jim Hogg --

A And others.

Q -- Zapata and Duval. Would you have an opinion, concerning the political trends of this

lower part of this district; are they traditionally Republican or Democrat?

A I would say they are Democrat.

Q Would you state they are liberal or conservative?

A Possibly more liberal.

Q Would you say --

A Possibly more liberal than conservative.

Q Do you know what the economy down there is based on?

A Not really. I am not that familiar with these particular counties to the south.

Q All right, sir. Would you have an opinion -- pardon me -- as to whether or not there would be a community of interest between the people in northeast San Antonio and northern Bexar County and the people down in Jim Hogg, Zapata, Starr and Duval Counties?

A I don't think so.

Q You don't think they would have a community of interest?

A (Witness shakes head)

Q Do you think that if a Senator should be elected from, say, roughly the geographical

center of this district as proposed, would you say that he could easily represent the interest of the people in the extreme southern portion of the district and the people in Alamo Heights and Terrell Hills on certain issues that might come before the Legislature?

A It would be difficult.

MR. EASON: Thank you, sir.

CROSS EXAMINATION

QUESTIONS BY MR. LUNA:

Q Mr. Garza, my name is Earl Luna and I represent Roy Orr, the State Chairman of the Democratic Party.

A Yes, sir.

Q I would like to ask you, sir, from the standpoint of practical politics, generally, in getting people elected to the Legislature, City Council or other office, regardless of ethnic background or political party, which, in your opinion, is the most important, one, having the support in the form of manpower and financing of an effective political organization such as the Good Government League, or, two, single

member districts?

A There is no question about it, the finances and the political support.

MR. LUNA: Thank you, sir.

MR. GEE: Your Honor, in view of the shortness of the questioning, I wonder if I might ask him --

JUDGE GOLDBERG: Sure.

MR. GEE: One or two questions.

CROSS EXAMINATION

QUESTIONS BY MR. GEE:

Q Mr. Garza, the statement was made on your behalf by Mr. McDaniel, perhaps before you came into the Courtroom, that as a matter of professional philosophy you felt the single member districts were preferable?

A Yes, sir.

Q That is correct, is it not?

A That is correct.

Q And, when you say you think a single member district is preferable, that must mean you

think it is preferable to the present at large or multi-member district?

A That is correct. I don't think this is going to solve the problem that we are seeking. But, when we are talking about preferable between, one, single member, two, multi-member district, there is no question that the single member district is preferable.

Q Yes, sir.

A But, it doesn't solve the problem.

Q Excuse me. And, the distinction that Mr. Luna seeks to make between the presence of the Good Government League and the single member district, there is no reason why you couldn't have the Good Government League and the single member district, is there?

A Not at all. I think that our charter revision committee at this particular time is looking into possibly single member district, or at least taking part of the council elected by district and part elected at large.

Q So, there is no -- those are not choices in any sense, are they?

A But, as I understand his question, he asked me whether I would prefer having the backing of

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a political party with money and financing and influence, or a single member district, and the answer has to be a relatively simple, "I would rather have the support", because in being realistic about politics -- and I think Mr. Idar made this point -- money is what elects you in most cases -- and influence and exposure. All these combinations get you elected to office. What you do after you are in office, of course, is --

Q Let's examine that just a moment, Mr. Garza. These are the things that get you elected to office if you have to run county-wide in a county the size of Bexar County, isn't that right?

A Repeat that again?

Q Money, influence, financing, these are the things which are extremely important if you are going to run county-wide in the county?

A The larger the area, the more finances you are going to have to have.

Q In fact, running at large in Bexar County, effectively eliminates door to door campaigning as a practical means -- at least taken by itself?

A I think door to door campaigning has gone fore ever. Since the advent of television.

Q Well, do you think it would

necessarily be gone forever in a single member district composed of approximately 74,000 people?

A I think you would probably communicate with people just as easily through some type of media, rather than having to go to parties and coffees, you know, the door to door type thing.

Q You think you can do it just as easily? As a matter of fact, you can do it probably easier --

A Easier.

Q -- if you have the funds to do it?

A That is right.

Q But, if you don't have the funds to do it, you can take the other route and go to the parties and knock on the doors, is that right?

A Right.

Q Your experience has been campaigning chiefly county-wide, hasn't it?

A City-wide.

Q City-wide? And, in your experience, is the financing, the money and so forth, which has been necessary?

A Yes, sir, that is correct.

Q But, you would agree with me that

in a single member district of a smaller size, they would not be as necessary or as indispensable as they are on the county-wide basis?

A I would agree with you to the extent that it would not be as necessary, but this does not preclude it being there.

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Q Oh, money always helps.

A This is the reason I say that having single-member districts is not going to solve the problems that most of you are seeking here today.

Q Yes, sir. I am sure that it is not going to solve the problems, but you will agree with me that it would be a step toward solving it, wouldn't it?

A I don't think so, because I think you are dealing here with political philosophies and we are not talking about helping people; we are trying to solve the problem. The Mexican-American, the everyday problem, the one that I can identify with, single-member or multi-member is not really going to solve it. I think what you are solving is you are solving the problem of one man over another man having an advantage in a particular area, but this can be overcome simply by finances and some amount of prestige behind an individual.

Q But it sounds from the report that Mr. Idar quoted to you that finances are a pretty severe problem for the folks running from the barrio area. Wouldn't you agree?

A It always has been, but in the Good Government League, for example, I would say that maybe

fifteen to twenty per cent of the money that is expended comes from the people that have businesses in that area.

Q All right, sir. Now, you have stated or it has been stated on your behalf that you do favor single-member district, however.

A Over the multi-member.

Q Yes, sir. What are the reasons why you favor the single-member districts?

A I think I just said it a while ago. It brings-- although you may not get the man that you want or any particular party you want in office, it does bring the-- it does bring government or that individual a little closer to the people and what it amounts to is, more citizens, direct citizen participation.

Q All right.

JUDGE WOOD: Mr. Gee, we have been over this over and over again. You are repeating. He has testified to all of this. Now go to something--

MR. GEE: --Very well, Your Honor.

JUDGE WOOD: He has testified to every bit of this. Go to something that--

Q In view of the Court's comment, I have just two more questions. In a given situation then,

unless there was some compelling reason for it, you would-- for the other choice, you would choose the single-member district over the multi-member district.

JUDGE WOOD: You have been over that, Mr. Gee.

A I think I have answered that about four times.

JUDGE WOOD: I think he has answered it four times. Let's go on to something else.

Q All right. What is the reason then, sir, why the multi-member district is preferable in Bexar County?

A I just told you. I think that it has more citizen participation, but it doesn't solve the problems.

Q No, sir. My question is, why is the reason why the multi-member district exists in Bexar County?

A Why does it exist?

Q Yes, sir.

A I have no reason why it exists.

Q Can you think of no rational reason?

A I haven't ever really thought about it other than I just grew up with it and it was there but

I have no reason for it.

Q Thank you, sir.

JUDGE GOLDBERG: Anybody else? We will take a ten minute recess.

MR. RICHARDS: Your Honor?

JUDGE GOLDBERG: Yes, Mr. Richards.

MR. RICHARDS: We have Counsel Allen here. He couldn't make it down here yesterday. He got weathered in in Dallas. I hate to interrupt, but could we put him on after the recess?

JUDGE GOLDBERG: Is that satisfactory with everyone?

MR. RICHARDS: He will be very brief.

JUDGE GOLDBERG: We can't fight the weather all the way so--

MR. IDAR: --Your Honor, I have another witness who couldn't come up because of the weather yesterday, so if it is all right, of course with him, and if the Court will allow me some leeway with this other one, that is fine with me.

JUDGE GOLDBERG: Your witness is in the city now?

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MR. IDAR: Yes. He will be available.

JUDGE GOLDBERG: Fine. Let's take a ten minute recess.

(Whereupon there was a ten minute recess, after which the following proceedings were had.)

MR. IDAR: Your Honor, I was unaware of the fact that my next witness has a commitment and has to return to San Antonio as soon as he can. This is my next to last witness. I have already advised Mr. Richards of my circumstances, and he has agreed to withdraw his request to--

JUDGE GOLDBERG: --Proceed then.

CHARLES L. COTRELL,

a witness called by the Intervenors (Tyler case) after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

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DIRECT EXAMINATION

Questions by Mr. Idar:

Q Will you please state your name for the record?

A Charles L. Cotrell.

Q What is your occupation?

A I teach political science at St. Marys University.

Q Are you the head of any department there?

A Yes. I am Chairman of the Political Science Department.

Q Where are you from?

A I was born in San Antonio.

Q Can you give us some idea as to your academic background?

A I received a B.A. in political science from St. Marys University in 1958. I received a Ph.D. in the field of government from the University of Arizona.

Q Pardon me. At that point did you do any major area of work in connection with that particular degree?

A Yes. I did my dissertation which was

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written on American Elotes

Q All right. Go ahead.

A I taught government at the University of Arizona, Texas A & I University, Wesleyan University in Connecticut and I have taught at St. Marys for the past five years.

Q Have you done any work relating to the voting behavior or voting-- any study of political attitudes of voting behavior of the Mexican-American population?

A Yes. For the past three years or four years I have conducted survey research in the areas of attitudes, voting behavior and specifically, ethnic political behavior in Bexar County.

Q Okay. Is there any other work that you have done or that students under your direction have done in this field?

A I have supervised several Master's theses, all dealing with either South Texas or Bexar County ethnic political behavior.

Q All right. Doctor, you have been in the courtroom for the last, I guess, all through yesterday and today?

A (Indicated affirmatively)

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Q Pardon me. There is something else: Have you done any work for any of the radio or television stations in connection with voting?

A Yes. I did some election analysis for-- I believe radio station KONO several years past.

Q How about your students? Have they conducted any voter profile studies?

A Yes. Almost semesterly since 1967, and also attitude profiles and this was done on both the graduate and undergraduate level.

Q How about in Arizona? Did you get involved in any kind of statewide study in that state?

A I was fortunate there to take part in a statewide study of the Democratic Party in the State of Arizona.

Q Was it written work that--

A It was a written manuscript on the Democratic Party in the Bureau of Governmental Research at the University of Arizona.

Q One of the issues in this lawsuit relates to your majority system of electing candidates like we do in Texas where we have the place system; we have a runoff election so that we be sure that everybody be elected on the majority basis in the party primary, for

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example, and the plurality method. From your knowledge of political science and political behavior and particularly if you can relate it to the Mexican-American in Bexar County, would you give us your views on that issue that is before the Court?

A The question of representational schemes, the question of ballot schemes and the question of general election schemes has long been a subject for the study of political scientists.

Beginning with political scientist Maurice Duverger in the '50's and then continued in the 60's by political scientists such as V. O. Key, I think one could reach conclusions such as these about election schemes, representational schemes and so on.

Duverger concluded after a very exhaustive study-- his work was substantiated by V. O. Key, and I think that there is data to substantiate this in Bexar County-- that the plurality system encourages both recruitment and election of more diverse factions than does the majority system as a ballot system.

Duverger found that, in fact, the two ballot system, that is, that a majority ballot with a runoff, was the kind of system which least encourages both the recruitment-- and I think that is an important issue here--

the recruitment and the election of candidates to office.

In Bexar County I believe that that would be borne out by this fact. From the period 1960 to 1970, in the recruitment stage, and I hope that the Court would consider this a vital part of the electoral process-- the recruitment of candidates-- only twenty-two of a hundred and thirty-three, in a hundred and thirty-three races in a democratic primary, only twenty-two of those were entered by Mexican-Americans at the state legislative level in the Democratic primary, bearing out the Key-Duverger thesis showing that certain kinds of represantational systems and so on discriminate against diverse factions.

Q Of course, actually we do not have a plurality system in Texas, do we?

A That's true.

Q We have the system whereby a candidate has to announce for a place, say in the party primary, and if he does not get a majority vote in the first primary he has to go into a runoff with the next highest candidate. Do you have any views as to how the control of a political party operates under both of these systems that we are talking about, plurality versus majority vote-- party control?

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A Well, if you are-- your question relates to Bexar County and to Texas. Of course our-- there is no real party control in the state in Bexar County, at least, in the state legislative races. There is no control concerning the recruitment of candidates and so on.

Q For example, is there any formalized procedure whereby the Democratic Party in Bexar County would go about slating candidates for a Democratic Party primary election?

A Your question concerns party control. No. I would describe the process of recruitment or selection of candidates in Bexar County as informal and almost anarchic.

JUDGE GOLDBERG: Do you think that this is an issue in this case?

MR. IDAR: Well, Your Honor--

JUDGE GOLDBERG: --I am interested and have a great intellectual interest, but I just wonder what the pertinence is. Maybe you can help me.

MR. IDAR: Well, there is one sentence in the Chavis case where the Supreme Court, in effect, stated that in short, we are unprepared

to hold that in an election conducted on a plurality vote basis, such a system would be unconstitutional.

What I have in mind, Your Honor, is a key distinction between a plurality type vote and a majority, because in a plurality type vote, if you have five vacant places with twenty candidates, the five highest would have an opportunity to get in.

JUDGE GOLDBERG: I don't argue with this, Mr. Idar, but Judge Harlan, in his concurring opinion, of course, referred to the fact that the majority apparently is committed to the majoritarianism in this country, and he is still bellowing against it in the concurring opinion, but I don't want to-- I see no reason to regurgitate it because however you read the majority opinion in Chavis, we are still under the majority system. Now there may be representation and proportional voting in hundreds of other variations. It is very interesting, but is it germane to what we have got to decide here today?

MR. IDAR: Well, if the Court feels we

already have enough on the record to draw the distinction and the effect of the plurality vote versus the majority vote, but I still feel, Your Honor, that despite what Judge Harlan said in his dissent, I am very much intrigued by that one sentence that the Supreme Court referred to, because in Indiana they follow the plurality system, and in effect have party control where the party selects the candidates and--

JUDGE GOLDBERG: --All right. Judge Justice says he wants to hear some more about it. So go right ahead.

MR. IDAR: All right, sir.

Q Where were we?

A Mr. Idar, may I say this to the Judge, through you? One of my-- one of the very important issues in this case, it seems to me concerns the definition of elections and then discriminatory effect and intent in that process. And it would be my contention or my opinion that the recruitment process is an equally vital part of the election process and that in Bexar County, at least the 200,000 people in this twenty-seven tract region that you have outlined

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on this board here, have been discriminated against in both recruitment and election of public officials.

Q Let me go on to something else then. Do you see any key distinguishing factors between the multi-member district and the single-member concept of legislative representation?

A Well, there are some very obvious ones. The single-member district, drawing on an ancient American tradition of a small scale government, a small scale district, enhances the principles of visibility of the candidate, responsibility in a legal sense of the candidate, and then the candidate's capacity to be responsive. That is, in the case of Bexar County, it takes no great mind to see that a candidate is more visible, responsible and can be more responsive to 74,000 people than to 830,000 people.

Q Do you draw a distinction between-- or do you draw a distinction between a member of the legislature-- talking about his relationship within the legislature itself, in contrast to his relationship back home with his people?

A Most certainly. Proponents of the multi-member district system have suggested that there is a greater legislative efficiency that is derived from that.

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That is, the so-called pendulum affect of legislative influence. I would only say that legislators in the-- are not responsible to other legislators, but are responsible to the groups of people-- geographically defined groups of people and the smaller those groups, the more effective the legislator can represent the people.

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BY MR. IDAR:

Q What about this idea that a member of a multi-member legislative delegation is, in effect, a member of a team that can respond based to the needs of the over-all community versus the idea of his representing one small apportion of that community? Does there necessarily have to be any conflict as between those two concepts under a single member district theory?

A As I have sat through testimony in this courtroom this past two days, I have heard it said time and again, logically, I might add, on a logical basis -- I have heard it said time and again that if a single member district system were adopted, that the county itself would suffer, because there would be no necessary cohesion in the legislative delegation, and, Mr. Idar, I find that very hard to believe. I find it hard to believe that in Bexar County, for example, if we had a single member district system, that our delegation could not come to grips and could not unify and consolidate to gain such things as the University of Texas at San Antonio, to gain such things as a dental school, a medical school and so on.

I would say, however, if we did have a single member district system in Bexar County, quite possibly those installations, those great prizes of the

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legislative process, may have been more equitably distributed in location throughout the county.

Q You have referred to the University of Texas at San Antonio, the medical school and, as I understand, a dental school that is also already approved by the Legislature.

Would you go over to this map and indicate to the Court the general area in the city where these three major installations would be located, some of them already having been, the medical school in particular?

(REPORTER'S NOTE: Witness complies.)

A These are quadrant---.

Q I'm talking about the medical school, the University of Texas at San Antonio and the proposed dental school.

A The Bexar County Medical School here (indicating), northwest quadrant; the University of Texas at San Antonio roughly in here (indicating), northeastern; the dental school, Mr. Idar, I am not familiar with. I am not sure where that is going to be placed.

Q I might add that these were issues in contention, many people contending that they should -- or

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one of these installations should be placed in the southern part of the city.

Q All right.

A Or the southwestern or eastern part of the city.

Q Do we not have also a major Highway Department complex in that area, too?

A It is -- I guess I would describe it as slightly northwest.

Q All right.

A In the city. I don't think I could---.

Q I am just talking about the general area. I don't want you to take the time to find the street and all that.

Now, as far as the medical school, is it not true that as a result of this particular medical school being located there, that the county also constructed what we call the Bexar County Hospital adjacent to the medical school?

A That's true.

Q And all of these, aside from the county hospital -- I mean the other installations were a result of the action by the Texas Legislature in the last three or four years?

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A That is true.

Q Do you know of any major installation of any type that the Legislature has appropriated or has approved, even if not yet appropriated funds -- that would be located in any portion of San Antonio, if you were to draw a line from west to east, dividing the city between north and south -- is there anything in the entire southern portion of the city?

A Do you mean recently?

Q Yes.

A To my knowledge, no.

Q You don't, I suppose, have any idea as to the value of the installations that we have been speaking of in dollars and cents? Do you have any idea how much---?

A I wouldn't venture a guess on the physical value, no.

Q Now, I might as well get your views at this point, because I am sure if I do not, the Court will want to know them.

What will be the factors or the components that you would consider if you were to be assigned the task of drafting a redistricting plan particularly -- well, confining ourselves to just Bexar County.

A I would use the standards that the districts

be compact, contiguous, equal in -- roughly equal in population in as small as possible deviations, that also -- and I want to be very careful here in the way I phrase this -- that recognizable communities of interest become operative informal criteria for the Legislative Redistricting team, although I realize that the communities of interest, such as, most importantly, such as economics and ethnicity, cannot be codified or made uniformly applicable, I would go so far as to say, Mr. Idar, if a single member district system were adopted along the lines of these criteria, that one could randomly start in Bexar County drawing up compact, contiguous, equal districts which would insure effective representation, randomly start, and you would have a system which would insure from both recruitment to elections a more equal opportunity for ethnic minority groups, Mexican-Americans and blacks, and any other area, whoever else it might be, and also minority political parties, such as the Republican Party in Bexar County.

Q Would there be any need to torture your lines or to gerrymander in order to insure that a particular group would have a fair chance at electing somebody?

A In Bexar County if these criteria were employed in a single member district system, I would venture

a guess that it would not be necessary to draw salamanders, lizzards and other fantasy animals for districts.

However, in some rare cases it might be -- it might be a possibility that elongated districts or something which deviates slightly from the compact criterion, would have to be drawn to insure a community of interest.

Indeed, with the legacy of discrimination, minimization, cancellization that the Plaintiffs are attempting to demonstrate in this case, it would seem to me that any group that has as their task redistricting would look at this legacy and respond accordingly, but I don't believe in most cases tortuous districts would be necessary.

JUDGE WOOD: Have you attempted to draw such a plan to meet the elements you told us about?

THE WITNESS: Presently?

JUDGE WOOD: Do you have a plan to show the Court that would meet all of these requirements?

THE WITNESS: I am aware that a plan exists, and I am not sufficiently familiar with the lines, that is, to go up on the map and show you exactly what the results

would be and where the lines would be drawn. I am aware that a plan does exist, Your Honor.

MR. IDAR: May I advise the Court, Your Honor, that Mr. Richards and the other people in the Dallas case have been working on a plan. Dr. Cotrell was not used for that purpose and has not been requested to work it out.

BY MR. IDAR:

Q Another thing that has been running through the testimony in this case that I would like to get your views on -- are we dealing here when we are talking about multimember versus single member districts, is this strictly a liberal versus conservative fightin your estimation?

A Certainly not; certainly not. I know this issue was introduced. The notion involved in the single member district is an equitable opportunity, a more equitable, much more equitable opportunity in the recruitment and election process for various communities of interest to be represented, not that it would favor liberal or conservatives, indeed, not that it would favor brown over black, black over white interests, but merely to insure a more equitable chance for these groups, which I think have been invidiously discriminated against.

Q Bearing in mind the single member versus multimember district concepts again, would you care to comment, or rather, I would like to ask for your comment or your views on the dictum or whatever you want to call it that that government is best that is closest to the people.

A Very briefly, I tried to talk about this Jeffersonian norm earlier in terms of scale, and quite obviously, single member districts incorporate the principle of scale, that is, smaller size much more effectively than a multimember district can do.

This notion was born out of Thomas Jefferson's political philosophy, that is, that the government which was most distant was the one to be most mistrusted, because citizens could not have the necessary face-to-face contact, the necessary participation, the necessary day-to-day awareness of what their officials were doing.

Q Did you hear Dr. McCleskey refer to the rules of the game being crystallized in Texas as far as the black population during the first half of the century when the blacks were fairly well frozen out through the system that was adopted? Do you recall that aspect of his testimony?

A Yes, I do.

Q Would that be true as to the Mexican-Americans?

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A Most certainly, at least, in Bexar County that is my experience. I think that there is evidence to substantiate this.

Let me repeat, in the recruitment process no more than 22 Mexican-Americans out of a total number of races of 133 have ventured forth for state legislative offices by means of the Democratic Primary from the period 1960 to 1970.

More importantly, only four Mexican-Americans have been elected to office in that state delegation from the period 1960 to 1970, and if we count Bob Vale, a personal acquaintance of mine, a man whom I have supported both financially and politically, if we count him -- well, some would not count him, because he does not identify ethnically with the community nor economically with the west side, and they don't, I don't believe, identify with him that closely.

Q What about this concept of Dr. McClesky's about permanent majorities and permanent minorities? What are your views on that in relation to the Mexican-Americans?

A Well, I attempted to make the case through statistics. Very simply, 208,000 people in that 27-tract area that is in orange there (indicating) and the 6.8 percent or probably higher percent of San Antonio which is

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black, or the east side of San Antonio, those people are effectively over long periods of time have effectively been frozen. They have become perpetual minorities. They have been disfranchised effectively.

Their 200,000 votes, or their votes, rather, for the 200,000 people simply don't count in legislative races, which is, I understand, the issue at Court.

Q Do you feel that we have a growing problem relating -- as far as the Mexican is concerned, do you feel we have a growing problem of inter-group relations between them and the Anglo-American population in Bexar County?

A My surveys have demonstrated, along with a volume of other literature, beginning with Ralph Guzman-Joan Moore's "the Mexican-American People," many other studies have demonstrated a growing polarization, a tendency to stereotype, a tendency to write off whole stratas of the population and attribute certain kinds of typecast opinions to them and behavior to them.

Also my studies have demonstrated in Bexar County, at least, a growing alienation, particularly among the young and more important and, I think, a great issue before this Court, a growing cynicism with the political processes which young Mexican-Americans have increasingly begun calling Anglo-dominated, Anglo political procedures

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used specifically to disfranchise them, to prevent them from effectively and fairly taking part in the political processes.

Q Would adoption of a single member district for the Texas House of Representatives in Bexar County in your view help or hinder doing away with this polarization that is taking place?

A I think your choice of the word "help" is really important here. Yes, it would help. By no means no fool would say -- no one would say that this is going to completely resolve the issue. It would help to this degree, that both actually and psychologically people in these districts, single member districts, would have the opportunity to choose the people who they would like to represent them, liberal, conservative, Mexican-American, black, Republican, Democrat or whomever, and this question of self-determination and preference seems to me to be a keystone of the demands of young Mexican-Americans and young blacks and other ethnic minorities in this country.

Q What about this concept that because the Anglo-American and the Mexican-American are equal in numbers in Bexar County that if applied to the Mexican-American as a group it is equal therefore in every other respect to the Anglo-American, but specifically in representation in the

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Legislature?

A Frankly, Mr. Idar, I was shocked at the naivete of that kind of question when it was initially asked. All voting behavior data that I know of in this country and certainly, the kinds of data that we have gathered in Bexar County, demonstrates that numbers don't tell the entire story here.

Of course, there is a generally equal proportionate population among the Anglo and Mexican-Americans, roughly equal. It has been debated about that percentage actually for years, but a number of factors would enter in that would effectively disfranchise the Mexican-American.

In his case, his cultural heritage and his language can sometimes act as an obstacle in understanding what seems to him to be very complex political procedures.

Q And what about the concept of community of interest? How do we define that in your view? What do you have in mind when you say that these districts should be drawn with community of interest in mind, or is that a factor at all? I don't know if I asked you that earlier.

A Well, I think it is very important, a very important factor, and we couldn't simply in a rather glib way respond and say that, "Well, community of interest is some sort of vague abstract notion." I am speaking

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essentially of two very key constants in American politics and Bexar County politics.

I am speaking of economics, and I am speaking of ethnicity or ethnic group interests, and, in part, these are self-defined. The people living in that tract know that they are of Mexican heritage. They know what it means to live there, and they also coincidentally are very poor. Black Americans, the same could be said for them.

When we speak of economic interests, of course, operationally it becomes a tough question, but certainly, if one were drawing up counties in South Texas or districts in South Texas, one would take into consideration the peculiar economic plight of the migrant farm worker, or if one were drawing up districts in Northeastern San Antonio, one would take into account the rather high income level that supposedly is distributed in that area, so it would vary with situations.

(No omission here.)

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Questions by Mr. Idar:

Q What about this other idea, that under a multi-district situation you can probably remedy the entire problem by merely requiring that the ten or eleven people from that area reside in the ten or eleven different subdistricts within the multi-district; would that resolve the issue completely?

A Well, you mean whether or not there was a residency requirement inside the multi-- stipulation in the--

Q They would still be running at large but they would be required to reside-- If they wanted to announce for Place 1, for example, in a ten member delegation of Bexar County, they would have to be located in a certain geographical area designated for Place 1 but they would still run countywide.

A Perhaps I didn't convey to you the full meaning or flavor of representational theory in the single-member district-- the old

No, it wouldn't solve the issue. It would help. It wouldn't resolve the issue, though, because the legislature would still be responsible to 830,000 people-- this rather vague and morphous group-- as opposed to a

homogeneous 74,000-- or at least a more recognizable geographical group.

Q Well, the legislator that resides in Bexar County and responsive to a district comprising only 74,000 people, would the reverse be true? Is he in such a bind there that he is not able to work with other members of the same Bexar County delegation for certain objectives that they want to achieve in the legislature? I believe you answered that but I want to be sure you--

A Yes. As I said, I think that is a false issue, the fact that people from single-member districts could not conjoin and unify in support of certain countywide programs simply has not been proven.

Q Now, when we are talking about redistricting, how many groups are we talking about? How far should we go down in considering groups; do we have to worry about the Catholics and Protestants and all these other people that have been cropping up in this case?

A I mentioned two groups, or two bases, economics and ethnicity. And, I mentioned those because they are proven to be constants in politics since the time of Aristotle. Indeed, when Mr. Roy Barrera and Mr. Gilbert Garza were in this witness box they implicitly

recognized, when one of them criticized the senatorial district which goes from south to north, he criticized it because of the extremely diverse economic interest in that district. So, these are constants which any politician takes into account-- the ethnic factor in setting up tickets has been mentioned time and again in this courtroom. So, I speak of two identifiable communities of interest. I didn't speak to religion because Bexar County is not known as an island and it doesn't seem to be that dominant or salient an issue in politics in the surveys that we have taken. I don't believe that you would find politics pitched on religious grounds that much elsewhere.

Q In your view is there any other significant item of information crucial to the issues before this Court that I might have overlooked that you feel the Court should be made aware of?

MR. LUNA: If it please the Court, I think we object to a general dissertation.

JUDGE GOLDBERG: Well, we will listen to anything that the witness can give us that will enlighten us, because we sure need it.

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BY MR. IDAR:

Q All right.

A Just this: if a single-member district system were adopted and the general criteria which I have suggested here to you were adopted, compactness, contiguous districts and equal districts, one that takes into account identifiable communities of interest and one which would start-- you would start drawing the districts in a random way, I feel that the Mexican-American population of San Antonio, and particularly in that identifiable twenty-seven tract area, would receive two and possible three representatives. It is debatable whether they now, at the state legislative level, have any. The Black population of San Antonio would stand to gain one, maybe two. The Republican Party, a minority party, would stand to gain one, maybe two-- all of which would be better than what we have now, which is nothing.

MR. IDAR: Thank you. Pass the witness.

MR. EASON: I have no questions.

MR. LUNA: I have no questions of this witness.

MR. McDANIEL: We have no questions.

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MR. CURRY: We have no questions.

JUDGE JUSTICE: I have one or two questions, if I may.

QUESTIONS BY JUDGE JUSTICE:

Q According to certain language in Whitcum versus Chavis-- Now, we see nothing in the findings of the District Court indicating recurring poor performance by Marion County's delegation with respect to center township ghetto, nothing to show what the ghetto's interests were, and, in particular, legislative situations, and nothing to indicate that the outcome would have been any different if the twenty-three assemblymen had been chosen from single-member districts. Now, aside from the absence of certain public buildings, hospitals and that kind of thing in the barrio area of San Antonio, can you point to any other failures on the part of the legislative delegation from Bexar County insofar as its protection of this particular minority's interests are concerned?

A I didn't mean to, Your Honor, to slight that hospital question. You notice that it was a question of location, and I was suggesting that if a more equitable representation on the delegation had existed at the time

it become law and the time these decisions were made that some of these vitally important health care facilities would have been located in more reasonably approachable places inside the county. Also, although I don't think it is purely an ethnic question, certainly taxation schemes, certainly the administration of health care--

Q You say "taxation schemes". What are you referring to?

A I am referring to sales tax and regressive taxation schemes versus income tax or other kind of more progressive schemes on both the city and state level. More importantly, there are a number of bills, I understand, before the Texas Legislature now concerning health care. And, I couldn't in this short time impress the Court with the kind of really tricky ethnic and economic questions which aris in the administration formulation of health care programs. To my knowledge Joe Bernal, Senator Joe Bernal, is one of the few who is taking this group-- this twenty-seven tract area-- and possibly the east side included-- their interest at stake concerning health maintenance organizations at the state level. What you ask for, Your Honor, however would have to be concluded by a

very exhaustive roll call analysis in the legislature. And, given the haste with which I prepared for this I wasn't able to undertake a roll call analysis. One other thing, Your Honor, the Chavis part that you quoted suggests actual political benefits. Let me suggest one other benefit; if not having dollars and cents and practical program value that has deep meaning in this country, and that is the question of symbolic representation, balancing what I would call actual representation. These people need representative with whom they can psychologically identify. No one would contend that the Bexar County delegation, now or in the past, has been constituted thusly.

JUDGE JUSTICE: Thank you, sir.

QUESTIONS BY JUDGE GOLDBERG:

Q I understood, aside from your objection to the reptilian configuration involved in the senatorial district down there, I understood you to say that you would "Commence randomly". I don't quite understand what you mean by "randomly". Would you take Bexar County and have someone blindfolded and then go and pick a point on a map and move from there? What do you mean by "random"? Or would you put a whole bunch of numbers, census tract numbers in a hat and pick one

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out and start from there?

A I think the device-- You know, the statistical meaning of "random".

Q Yes.

A All right. The device you would employ could be either one. It could be the one the Selective Service uses in terms of census tract drawings or it could be, really, the pin the tail on the legislative district system-- it would vary. But, I would say "random" because I am convinced whatever scheme you would use-- I don't care if you go back to the old Greek system-- whatever scheme you would use, if you had single member districts as the basis and you followed the criteria which I am suggesting you would encourage the fair representation of these groups we are speaking of, which I suggest have been permanently frozen out of the electoral process. I couldn't think of a more fair way than random election through probability. If you allowed someone to start, let's say, the senior member of the Bexar County delegation, a friend of mine, let him start, I am sure he would start with certain things in mind and he would, for example, start at the southern end of the county making certain that people with all of the interests he wanted taken care of would

then be taken care of at that end of the county. But, this way you would begin, as it were, in a random way and work out concentrically around, keeping in mind compactness, contiguous nature of the district, the equal nature of the district. And, because there is no ideal compact norm you would also take into account, as a normal factor, informal criterion, these two vital communities of interest. But, I know they would be taken care of.

JUDGE GOLDBERG: All right.

MR. EASON: In view of the last question and answer I would like to ask the professor a question.

CROSS EXAMINATION

Questions by Mr. Eason:

Q Now, the remarks you have just made concerning random picking of precincts, you are speaking strictly of single-member districts in a metropolitan area, am I correct in this?

A It was all under the assumption that we had a single-member precinct, yes.

Q Yes, sir. And, your reptilian or salamander thing-- you were speaking more of the

senatorial district, were you not, as proposed by the Board?

A Well, I think in testimony this morning that one of those districts, the one stretching from south to north, the old Wayne Connally district, has been described as one of a reptilian nature.

Q But the two things don't have any correlation in your analysis of this thing, do they? By that I mean-- I suppose I am correct-- the reptilian concept which would take in the northeast San Antonio and northern Bexar County and go clear down to Starr, Jim Hogg and Duval and so forth, you are not expressing an opinion based on your expertise that this would be acceptable from your random drawing of precincts generally? What I am trying to do is differentiate-- You are saying that the random drawing of the precinct would be confined to single-member districts in metropolitan areas?

A I am addressing myself to the state legislative-- Lower House and the single-member district scheme there. I am not necessarily addressing myself to the senatorial districts. I would have to rethink the question. I would maybe introduce another criteria with that senatorial district, and that is the

homogeneous character of the district. For example, you are including-- and this is what Mr. Serrera was upset about-- you are including rural and urban and that is really stretching a point.

JUDGE WOOD: How do you avoid this if you follow the one man-one vote rule always?

A You can't always avoid it. You can merely minimize it.

JUDGE GOLDBERG: But, in your community of interest maybe Starr and Zapata and some of those counties have a lot in common to some of the areas in San Antonio.

A I would contend that Starr, Zavala, Hidalgo, LaSalle counties do not have as rural, heavily dominated Mexican-American counties do not have as much in common as urban San Antonio.

JUDGE GOLDBERG: Even the barrio section? The ethnicity you would completely disavow?

A Not at all. But, the rural expressions of ethnicity, as even used in the William Matson demonstration, rural expressions of ethnicity are very different from urban expressions of ethnicity, as in the cases of Los Angeles and San Antonio demonstrate. So, I was addressing myself to the lower House and the

senatorial districts. I might have to rethink. But, I think that homogeneous critaria I would include.

JUDGE GOLDBERG: Thank you.

MR. RICHARDS: Is it possible--

MR. IDAR: We will let him proceed now.

JUDGE JUSTICE: Call your witness.

GEORGE ALLEN,

a witness called by the Plaintiff, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Richards:

Q Could you give us your full name, please, sir?

A George Louis Allen.

Q Where do you live, Mr. Allen?

A At 2230 Hatcher, Dallas.

Q And how long have you lived in Dallas?

A About thirty years.

Q You are presently a member of the Dallas

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City Council?

A I am.

Q What is your business, Mr. Allen?

A Beg your pardon?

Q What is your business?

A I am a public accountant.

Q How long have you been on the City Council?

A This is my third year.

JUDGE JUSTICE: Would you speak up a little louder?

MR. RICHARDS: Pull the mike up there.

A They usually charge me with talking too loud.

BY MR. RICHARDS:

Q When you initially went on the City Council were you elected or appointed?

A I was appointed when they increased the size of the council from nine to eleven places.

Q And, have you subsequently been elected to the council?

A Yes, twice.

Q Was that part of what is known as the

Citizens' Charter Association slate?

A That is right.

Q Are you acquainted in Dallas with what has been identified here as the Democratic Committee for Responsible Government?

A Yes, I am.

Q Is the Citizens' Charter Association to city politics essentially what the DCRG is to county politics?

A I would think so.

Q It has been testified that the Democratic Committee for Responsible Government in Dallas dominates the Democratic primary nomination of state legislative candidates. Do you agree with that view?

A Yes.

Q To your knowledge-- to the best of your knowledge-- how long has the Dallas Committee for Responsible Government been in existence functioning in Dallas?

A Well--

Q Roughly.

A Well, I have known the name about five or six years, but frankly the same people are involved in the organization, to my knowledge, over the last

twenty-five or thirty years have been handling Democratic politics in Dallas County.

Q Are you saying, then, that a predecessor to the DCRG, in the sense of perhaps under another name, has dominated the Democratic primary in Dallas County for the last twenty years or so?

A I don't know that there is another name, but the people primarily are the same.

Q All right. Based on your observation over··· How long have you been involved in politics in Dallas County?

A About twenty-eight of the thirty years.

Q All right. Based on your observations of those years, to what extent does the Black community of Dallas County participate in the legislative candidate selection process of the Democratic Committee for Responsible Government?

A In the selection process I would say none.

Q By that I mean the creation of their slate.

A I would say none.

Q In your opinion, does the use of county-wide legislative districts in Dallas County operate to

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minimize the voting strength of the Black citizens of Dallas County?

A There is no question in my mind about that at all. Yes.

Q Why do you say that?

A Well, if you have got no power of selection-- if you can play no part in the selection process-- then you have no way of helping to choose the people who will represent you. And, I am not talking about the Black people only, I am talking about the people whom the Black community would vote to represent them.

Q Be they Black or White?

A That is right.

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Q And you are saying, as you see it now, that the Black community of Dallas has no role to play in the slate-making ballot by the D.C.R.G.?

A I certainly do say that.

Q How did it come to pass, Mr. Allen, that you and Dr. Conrad and Reverend Holmes intervened in this litigation?

A Well, we tried to get a hearing before the State Legislative Redistricting Board. We filed telegrams, asked to get heard, we got no response at all. We wired and called the Lieutenant Governor direct. We did the same with the Attorney General. We finally got to talk to one of the assistants in the Attorney General's office and he indicated to me that if I sent a statement down, he would see to it that it got in the record. I am not in a position to indicate whether this got into the record or not, but I presume it did. However, when the Board -- we felt reasonably sure that the board would come up with single member districts. We have had what we thought was reasonable assurance from certain members of the Board. But when they came up with that large district, Zan Holmes and Hamit Conrad and I decided that maybe it would be the propitious time to convene a meeting with all of the Black elected officials of Dallas County and

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the 43 elected precinct chairmen.

Q The Democratic Precinct Chairmen?

A Yes. Well, all of the precinct chairmen.

Q There are 43 Democratic Chairmen?

A There are 43 Democrats, but there were two Republican Chairmen that were Black, too, and also the Black members of the School Board of --

Q -- Wilmer Hutchins?

A Wilmer Hutchins, right. We put the question to the assembled group, what action should we take? We had the nine Black lawyers of Dallas, of the City of Dallas present. It was their thinking that we ought to attack all three of the redistricting lines -- the Congressional District lines; the State Senatorial District lines, which really just -- it threw us out completely, because we had one district, the old Mike McCool District, where there were 54 percent Blacks in it and they changed the line -- drew a line right through the District and put half of us in the new Mike McCool District and now we constitute about 31 percent and put the other half into the new district, embracing Ellis County, which gave us about 33 percent of that district. So it is physically impossible to elect a Black State

Senator from Dallas. At any rate, --

Q -- try to concentrate your --

A -- I am sorry. Well, that kind of upset us. That, and the Legislative Districts. The group testified -- I mean, they adopted a resolution that we should proceed with filing these lawsuits. Well, of course, the cost, et cetera, involved, we later decided that it may be less expensive if we intervened in this suit.

Q All right. Did this intervention on your part represent the will of --

A -- it was unanimous, if that is what you mean, yes.

Q Yes. And one further question: why, from your observation, is this matter of county-wide Legislative Districts a matter of such concern to the Black community of Dallas?

A Well, as I stated earlier, we have never had a role to play in the selection process and you just have an exercise in futility when you permit it to vote -- we haven't been voting that long anyhow, but when you are permitted to vote in the primary, but you have nothing to say about who you are voting for, and then come November, it is meaningless. But we still vote.

Q And is it your observation that this matter of single member/multi-member districts is a matter of concern to the entire Black community?

A Of immediate concern, and urgent concern, and a great concern.

Q Thank you, sir.

CROSS EXAMINATION

QUESTIONS BY MR. STEELE:

MR. STEELE: May it please the Court, I am Cleo Steele.

Q Mr. Allen, do I understand you ran on the slate last election? Is that right?

A That's right.

Q And were elected to the City Council?

A Yes, sir.

Q Would you describe the outcome of the voting when you won?

A When I won?

Q Yes. The number of votes you got as opposed to others.

A Well, in 1969 I got about 28,000+ plus votes, and in '71, about 53,000.

Q About 53,000?

A Yes.

Q Now, who had the most senority on the council when you were reelected?

A I had most senority than any other C.C.A. member.

Q Okay. And based on historical practices, as far as the City Council goes, there in Dallas, what was the practice for electing the Mayor pro tem?

A Well, the Mayor pro tem for the three -- part of three terms that I had served, the Mayor pro tem was selected as a result of the number of votes he received, the geographical district from which he ran -- usually a person would have to live in a neutral position to that of the residential requirements of the Mayor. Thirdly, his tenure was taken into consideration if he had the longest period of service on the Council and if he met these -- the majority of these three criteria, he was usually selected Mayor pro tem.

Q Okay. Following these practices, which historically have been the method of selecting

a Mayor pro tem, who should have been the Mayor pro tem at the time you were reelected?

A Well, I was promised the Mayor pro tem's position by seven of the council members, prior to the organization of the council.

Q And ordinarily following those practices you just sat out, then you would have been selected mayor pro-tem? Is that not correct?

A I met more of the criteria than any other council, if that is what you mean.

Q Were you elected mayor pro-tem?

A I think it is-- no, I wasn't.

Q Who was?

A City Councilman Ted Holland.

Q All right. Prior to your re-election to the City Council, how many races had you won?

A I ran two unsuccessful races, one in '63 and one in '65.

Q Did you run as a member of the team?

A No. I ran as an independent.

Q And the results were?

A I polled about 18,000 votes the first time and-- I am sorry-- I polled a little over 11,000 the first time and 18,000 the second time. But I was an "also ran" both times.

Q When you ran as a member of the team you won and both occasions when you ran not a part of the team, you lost.

A Handsomely.

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Q What sort of costs did you incur as a result of running and not a member of the team?

A The first time, I don't recall too well. Maybe $5,500.00 or $6,000.00. The second time, almost $10,000.00. I borrowed $9,300.00 from one source.

Q And you just recently repaid those debts? Right?

A Yes. Three months ago, to be exact.

Q Prior to your re-election as city councilman, do you know of any other Blacks that had run for and been successful in getting a seat on the city council?

A I knew of several Blacks who made the race from time to time, but none were actually elected.

Q Had any of those been a part of the team?

A No.

Q Okay. I think that we have introduced, prior to your testimony today, certain maps to the Court showing concentrated areas of Blacks in what is known at South Dallas. And we have also introduced evidence as to certain housing patterns in the Black community. In relation to the school situation in Dallas County, how do you think-- well, first let me ask you, in light of the 1954 Supreme Court decision to

desegregate schools, do you think, and based on your own opinion now as a city official that 1970, the Dallas schools were integrated-- adequately integrated?

A Well, I don't-- "Adequately integrated?" I believe that the housing patterns being what they are in Dallas, they would-- to integrate all the schools, I think the criteria was any school ninety per cent or more of one race was not an integrated school. I would think that there would have to be massive bussing, as there is, and of course we have got some 7,000 Black kids that are being bussed right now. I don't know that that would be adequate. I don't believe I am qualified really to-- I don't know too much about the school operation. I think I have got so much in the city's business I have to look after that I hesitate to pre-empt the school board in their responsibilities.

Q All right. Have you had an opportunity to talk to Blacks in Dallas County, Texas who may or may not be in official influencial positions about this matter of multi-member districts as opposed to single-member districts in the selection of county officials?

A Many times.

Q And state officials?

A Many times.

Q What were the views and the sentiment of the people with whom you spoke?

A Well, they were principally of one view, that we will never be able to truly select somebody to represent the Black community in these elective office unless we are able to participate actively in this selection process and that one way we can be assured of participation, and that is in single-member districts.

Q Okay. Did you not meet with certain Black precinct chairmen concerning this matter?

A I didn't hear you?

Q Did you meet with Black precinct chairmen--

A --Yes.

MR. RICHARDS: -- We have got that in.

MR. STEEL: I am sorry.

Q Okay. Going briefly here just a little bit further into discriminatory practices in Dallas, are you familiar-- or can you tell the Court about the city policies there in the recent past regarding ambulance services as relates to ambulances picking up Blacks and ambulances picking up Whites and this sort of thing?

A Well, counsel, I don't know that it is a city policy, but up until maybe three or four years

ago Black funeral homes, Black-owned funeral homes who had emergency ambulance service in Dallas were-- I don't know whether it was by contract or what, but they were not permitted to pick up anyone but Black injured cases. By the same token, White-owned ambulance-- emergency ambulance companies did not pick up Blacks and-- but lately-- I mean the last three or four years this has changed. White ambulances will pick up, at time, Blacks. I don't know about the Blacks picking up the Whites, but I do know that there is one notable exception and that is of the Hamilton Park area which is an area in North Dallas right off of North Central Expressway in far north Dallas. There is a pocket of Blacks and I don't know how many families live there, but it is considerable. Whenever they get a call for an injured case or a heart attack or what have you, the prime contractor which is Sparkland-Hillcrest Funeral Home, they dispatch the call to the Black and Clark Funderal Home which is a Black-owned funeral home-- well, they have got two locations; one in southeast Oak Cliff and one in near downtown Dallas on Washington Avenue near Ross, and this ambulance-- an ambulance is dispatched from one of those two locations to go all of the way across town to this little north Dallas pocket to get this person and get him over to the

hospital. Which Sparkland-Hillcrest has its main headquarters just a stone's throw away on the northwest highway, away from this location. And they could dispatch an ambulance in a matter of two to three minutes at a maximum and many times we feel-- we have indicated that this may be the difference between life and death in a heart attack victim or somebody that has been smashed up in an automobile accident.

CR - Allen

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BY MR. STEELE:

Q O. K., and---.

A We are trying to change that.

Q In relation to the State Fair of Texas there in Dallas, would you give us a brief description, as you understand it, of what was until recently known as Negro Day?

A Well, that was an ugly blot on Dallas for a long, long time. The State Fair of Texas had a two-week to maybe a 16-day affair that is pretty well known, pretty well publicized and a great fair. It is supposed to be the largest in the United States, but only one day out of this period could blacks be admitted to the grounds of the State Fair, and this even included going into the State exhibits and Federal exhibits, et cetera, but this has changed, of course.

Q O. K., and can you state whether or not on the Grand Jury there in Dallas there has ever been more than one black serving at any one particular time?

A Not to my knowledge, no.

Q Would you state whether or not at any one time there has been more than one black running for State Legislature, City Council or School Board on the ticket, on the team, as we call it?

A Well, there has been only -- there have been only two times that the C.C.A. has put a black on its ticket, and I was that black both times. That was once in '69 and the other in '71.

Q All right. And would you state whether or not matters pertaining to blacks and the black community are constantly referred to you as the black member of the team on the City Council?

A You mean by other members of the City Council?

Q Yes, by members of the Council and in general.

A Oh, I would say yes, indeed.

Q O. K., and do you think that this in any way burdens you as a City Councilman?

A Well, I don't feel that it burdens me. I felt that my election placed that responsibility on me probably more than on any other Council member, because the blacks look to me for articulating their problems and their needs, which were peculiar to the black community, to the rest of the Council and hopefully interpret them to them and try to get a resolution of the matter, so -- but I believe I could be more relevant and responsive to a smaller group in a smaller location, rather than to

200,000-plus blacks that are all over the city, the majority of whom are in the Southeast and South Dallas area.

MR. STEELE: Thank you. I have no further questions, Your Honor.

MR. HERNANDEZ: Frank Hernandez. I just have about three questions, Councilman Allen.

CROSS-EXAMINATION

BY MR. HERNANDEZ:

Q You know Mrs. Alfred Anita Martinez, do you not?

A Yes. She is a Council woman.

Q On the Dallas City Council?

A That is right.

Q And she was slated and endorsed by the Citizens Charter Association also?

A That is right.

Q And did she get approximately the same number of votes as all C.C.A. candidates did?

A Oh, yes.

Q And you know that she lives in far North Dallas?

A That's right.

Q Would you describe that as a ghetto area or a barrio area?

A No, no, that's the silk stocking area of Dallas, the affluent area.

MR. HERNANDEZ: Thank you.

JUDGE GOLDBERG: Mr. Luna?

MR. LUNA: I'm Mkrl Luna, representing Roy Orr, State Democratic Chairman.

CROSS-EXAMINATION

BY MR. LUNA:

Q Mr. Allen, you have talked about a good many changes that you have seen in Dallas County that affect the black community.

Would it be fair to say that you in your capacity as a Councilman have been most effective and instrumental in getting a lot of these changes made in favor of the needs of the black community?

A I have tried hard, Mr. Luna.

Q As a matter of fact, you have recently, maybe not so recently, sponsored, but recently been successful in

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passing through the Dallas City Council for the first time in its history what is known as a Fair Housing Ordinance, have you not, sir?

A That is right.

Q Now, by Fair Housing Ordinance we are talking about the terms that it means generally, open housing?

A That is right.

Q And you are elected in the City of Dallas at large, are you not?

A That is true.

Q Mr. Allen, as a member of the Council haven't you been very instrumental in planning to get a million and a half dollars worth of federal funds for flood control in a black area, which is highly subject to flooding, known as Roosevelt Heights?

A Well, a million and a half dollars total outlay, but half of it the city will put up in matching funds, $750,000.00 from the Federal Government, yes.

Q That is an area where we have heavy rains and it floods, and we have to---.

A Back up from the Trinity River waters, yes, have to evacuate the people.

Q Now, would it be fair to say that that need and that isolated instance is a need of the predominantly

black community? In other words, blacks mainly live in Roosevelt Heights, do they not?

A That is true, but I would go further than that. I would say that this is a humane thing.

Q Yes.

A That I believe the people of Dallas would respond to, no matter what the color is, and it just happened that these people are black.

Q That comes to my next question. Therefore, the white members of the City Council have worked with you to help reach that goal, which, as you say, the people that will be helped just happen to be black?

A The Council members have worked with me, a majority of them have worked with me on many real vital issues where Dallas is concerned, but I think, Mr. Luna, you are well aware of the many, many times I am voted down ten to one, too, on issues that we consider very vital to the black community, too.

Q And, of course, other Councilmen are sometimes voted down ten to one, are they not?

A I don't remember but one time when one of them was, and that was the Mayor. I really don't remember any other time.

(LAUGHTER)

A Maybe eight to three or six to five, really.

Q Do you have an independent on there that has been voted down once or twice?

A There's only two independents on the Council, and frankly, one of them -- well, one of them is the Mayor, but the other one, Councilman Jessie Price, is rarely voted down. I don't know whether he is a good salesman or what, but he gets the support of the rest of the Council.

Q In the case of schools, we do have in Dallas County what is known as the University of Texas at Dallas, do we not?

A Right.

Q That is a university that was created by the Legislature session before last, right?

A That is true.

Q Regular session before last.

A Regular session before last.

Q But it does not have the first two grades. Is that right?

A That's right.

Q Now, Dallas County in senatorial districts is broken up into single member districts, is it not?

A Right, single member senatorial districts, right.

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Q Now, when a politician wants to vote against a particular measure, he can always come up with a good reason to do it, if he is a good politician, can't he?

A That's what I hear, yes, sir.

Q Now, I want to ask you whether or not at the last session of the Legislature at least one of the members of the State Senate who is elected wholly within Dallas County did not oppose the bill to add the other two grades to the University of Texas at Dallas, that being a senator in whose district the University of Texas was not.

A Well, what is the question? I mean---.

Q Did he vote against it?

A I don't know. I really don't.

Q You don't know?

A No, I don't know.

Q You know or did know in his lifetime the late Joe Lockridge, did you not?

A Oh, yes.

Q Mr. Allen, do you know how Joe Lockridge was selected to run for the Legislature, in the first place?

A Well, I am going to have to speculate on that, if you want me to.

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Q You do not know? I thought maybe you knew and were a part of it.

A Well, I was a part of the group who sat around the table at the Moorland Y.M.C.A. to come up with a name---.

REPORTER: What Y.M.C.A.?

THE WITNESS: Moorland, M-o-o-r-l-a-n-d.

A ---to come up with a name, and frankly, I urged Ian Holmes to let us put his name forward, and Ian held us up a week while he, I guess, talked with his church people, and he came back and said he just couldn't do it, and the Rev. S. M. Wright, whom we both know, came up with Joe Lockridge's name, and very frankly, I didn't know Joe Lockridge at the time, and I had been in Dallas a long time, and there weren't a lot of Negro lawyers there, so I felt that I should have known him, and we threw the question around, "Who is Joe Lockridge?"

"Well, this is Rev. Lockridge's son."

Well, we had all heard of Rev. Lockridge, because he pastored one of the larger of the Baptist churches there for years, but I am told that Joe was selected, frankly, by our downtown friends and---.

(LAUGHTER)

A ---well, this is what I was told, and that

CE- Allen 710

it was suggested to Rev. Wright to sell him to us, and frankly, I was so glad to get a black on what I knew was going to be a winning ticket that I bought it.

Q So you recommended him to be a part of the team, didn't you?

A Well, I didn't recommend him, but, at least, I agreed, "It is all right. Go on with him." (LAUGHTER)

Q Yes. Does Rev. Sam Holmes effectively represent the interests of the black community?

A Oh, I think so; I think so.

Q Even though he is not elected from a single member district, you still think he effectively represents the black interests?

A Well, Sam Holmes is the kind of man that I think the whole black community would select as one of its leaders to represent them, if we have the choice of determining who should represent us.

Q And in your case where, as you said, you attempt to articulate the causes of the black community, you would do the same thing whether you were elected in a multimember district or a single member district, would you not?

A Oh, yes, I feel that is my responsibility.

CX - Allen 711

Q You have indicated that you favor single member districts of the Legislature?

A I do.

Q And is that based on your desires from a Legislative standpoint that you think it simply, regardless of constitutional grounds, you think it would be better?

A Oh, yes, I think it would be far better. I think one person can more adequately represent a smaller group and be accountable to a smaller group whose problems are pretty much common and uniform than he can a multi group of people with all kinds of varying problems.

Q You mentioned a black senator earlier. We have never had one in Dallas County, have we?

A No.

Q Although it was divided up from an entire county district to single member district, we still didn't get a black?

A No, and we didn't have the political sophistication either until recently.

Q Mr. Allen, in the race where you were elected, the last race--.

A Uh-huh.

Q ---isn't it true that in contested races you led the ticket?

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A That is right.

Q And isn't it also true that taking the ticket as a whole, Anita Martinez led the ticket?

A Well, she was unopposed. She couldn't have gotten more votes, but she led me by less than a hundred votes, and she was unopposed.

Q She is Mexican-American, is she not?

A Yes, very beautiful woman.

(LAUGHTER)

A I mean it helps.

(LAUGHTER)

Q Which, in your opinion, is the most important in electing black members to office, Legislature or otherwise, to have the -- which of these two in your opinion is the most important, (1) to have the support of an effective organization with both manpower and funds to help or (2) have individual districts?

A Well, in the first place, with all the manpower and resources that the established group has that has been financing these campaigns, making the selections and financing the campaigns in getting them elected, I think this still smacks of paternalism, and in my community we are a heck of a lot more sensitive to that than probably anywhere else in the city or in the county, and if I could

have my brothers, I would rather have the single member districts where people can assert themselves, and, as I say, a lot of the leaders that many of the blacks would select are not necessarily blacks, because we recognize that there are people with particular expertise in specific areas, and they are not black people, but I want to have the voice in saying whom I shall select to represent me, and this is the feeling of the black community.

MR. LIMA: Thank you very much, Mr. Allen.

THE WITNESS: You are welcome.

JUDGE GOLDBERG: Any other questions?

MR. CUNNINGHAM: May it please the Court.

CROSS-EXAMINATION

BY MR. CUNNINGHAM:

Q E. Brice Cunningham. I think I have just a few questions for you, Mr. Allen.

A Thank you, Mr. Cunningham.

Q What is the composition -- how many people comprise the City Council of Dallas?

A Eleven.

Q Has it always been 11?

A It was nine for many years.

Q And when was it changed from nine to eleven?

A 1968, November.

Q And two places were added then?

A That is right.

Q Was one of the two places added to the City Council designated as a black place?

A Well, it was Place 8, and 97 percent of the population of Place 8 is black.

Q And this was designated as the position for a black?

A That is true.

MR. CUNNINGHAM: Thank you, Mr. Allen.

JUDGE GOLDBERG: Any other questions?

MR. RICHARDS: No questions.

JUDGE JUSTICE: You may stand down.

THE WITNESS: Thank you very much, sir.

(WITNESS STANDS ASIDE.)

JUDGE JUSTICE: I have been requested to make an inquiry.

How many more witnesses do the Mexican-

American group have?

MR. IDAR: I just have one more on my main presentation, Your Honor, with the possibility of one rebuttal witness after the State finishes putting on its case.

JUDGE JUSTICE: Is this one witness that you have an expert witness or is it a fact witness, or what are the circumstances?

MR. IDAR: This is a witness relating to Dallas County, Your Honor. We have not been able to get a Mexican-American witness from Dallas, and he will be testifying, hopefully, not very long.

JUDGE JUSTICE: Well, we want to hear the case, but we are just trying to get an idea of how long it will take.

Now, following the close of the Mexican-American's case we will then, in turn, get to the case of the Republicans. How many witnesses are we facing here?

MR. CROUCH: Your Honor, we had talked about five. However, in view of the length of the trial, we are trying, and I hope during the lunch hour to be able to cut that down to

three.

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JUDGE JUSTICE: Are these expert witnesses or fact witnesses in the main or both?

MR. CROUCH: Well, both.

JUDGE WOOD: How long will it take to present them, Mr. Crouch?

MR. CROUCH: Well, I said yesterday, Your Honor, that I thought we could present our direct case in two hours. I intend to do it in a shorter time than that, if possible.

JUDGE JUSTICE: Yes, sir?

MR. EASON: I am sort of fish and fowl. On the San Antonio Republican Senatorial, I will probably have one witness, Your Honor.

JUDGE JUSTICE: Only one? Will it be an expert witness or will it be a fact witness?

MR. EASON: No, sir, it will not.

JUDGE JUSTICE: Thank you.

Now, insofar as the case for the State is concerned, and I am including here the interests of the State Democratic Executive Committee, would you give me an estimate as to the length of the -- how many witnesses and how long it will take?

MR. LUNA: On the Dallas phase of the case, Your Honor, we expect to offer three witnesses on the stand and then the deposition of two others. We don't anticipate---. 717

JUDGE JUSTICE: These witnesses that you are going to put on the stand, are they expert witnesses?

MR. LUNA: One is, two are not.

JUDGE WOOD: How long will they take, Mr. Luna?

MR. LUNA: I think that we can put on our direct with all three of the witnesses -- it will take roughly 15 minutes apiece to put on our direct.

MR. CURRY: Your Honor, our present planning is to conclude ours through depositions, and we intend to summarize them.

JUDGE JUSTICE: About how many such depositions do you have?

MR. CURRY: About six or seven.

JUDGE JUSTICE: Are they of the length of Lt. Governor Barnes' deposition?

MR. CURRY: No, sir, he exceeded everybody's depositions.

(LAUGHTER)

MR. LUNA: I will have two depositions 718
to summarize instead of calling the witness.

(REPORTER'S NOTE: The Court here confer out of the hearing of the court reporter.)

JUDGE GOLDBERG: We will be in recess for one hour.

(REPORTER'S NOTE: The Court then, at 12:42 o'clock, P.M., January 5, 1972, recessed until 1:42 o'clock, P.M., the same date, at which time it reconvened.)

(No omission here.)

(Court reconvened at 1:40 o'clock P.M., after which the following proceedings were had).

JUDGE JUSTICE: I believe you had one more witness?

MR. IDAR: Yes, Your Honor. Mr. Hernandez will put this witness on.

RENE VILLA SAMA MARTINEZ,

a witness called on behalf of the Intervenors (Tyler case) after having been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. HERNANDEZ:

Q Will you state your full name, please?

A Rene Villa Sama Martinez.

Q And where do you live, please?

A Dallas, Texas.

Direct - Martinez

Q Where at in Dallas?

A 6176 Fisher.

JUDGE JUSTICE: Would you speak just a little louder, please, sir?

A Yes, sir.

Q How long have you lived in Dallas?

A 25 years. All my life.

Q You are 25 years old?

A Yes, sir.

Q Where were you born? In what part of the City?

A Little Mexico Village.

Q Would you describe what Little Mexico Village is?

A It is predominantly Mexican-American neighborhood.

Q Now, where were you educated at? Would you give us some of your personal background briefly, in terms of your education, both your elementary and secondary and college and your community involvement and your employment?

A I was educated in elementary school, junior high school and high school in the Dallas Independent School District. I then attended Southern

Methodist University and received my Bachelor -- my B.A. Degree in History, Spanish and Latin-American Culture. I then was employed by the University for a summer and after that I was employed by the Dallas Community Relations Commission and I was the Assistant Director there and also the supervisor of the VISTA program in Dallas.

Q All right. How are you employed today?

A I am the Assistant State Coordinator of Children's Television Workshop, producers of Sesame Street and Electric Company.

Q For the State of Texas?

A State of Texas, right.

Q You are based out of Dallas?

A Correct.

Q All right. In your employment and community involvement, would it be a fair statement to say that you have occasion to meet with the Black and Mexican-American and white-American leaders of the community?

A Yes. In my employment with the Dallas Community Relations Commission, that was one of my specific responsibilities.

Q Without going into all of your community involvement, what would you consider to be the most important community service that you are performing now

for Dallas?

A I am currently the vice-chairman of the board appointed Tri-Ethnic Committee, appointed by District Judge William M. Taylor.

Q That is for the Dallas Independent School District?

A Monitoring the desegregation of the Dallas Independent School District.

Q And were you one of the original tri-chairmen appointed by Judge Taylor?

A I am the vice-chairman right now, and I will be the chairman next year.

Q Now, I know there has been some testimony in reading the record in terms of the discrimination that exists in Dallas toward the Black Americans, and I would ask you if you have an opinion in terms of the discrimination that exists towards the Mexican-Americans?

A Toward Mexican-Americans, it exists in all levels, similarly as with the Blacks; employment and housing, administration of justice, judicial situation, and in all areas.

Q Would that include education?

A Education, especially.

Q And how about in terms of the City

employment, Police force, Fire Department, et cetera?

A Up until recently we had only nine Mexican-American policemen in Dallas. As of now we only have one Mexican-Firemen in Dallas. So they are not represented.

Q All right. Now, in terms of the Dallas County Grand Jury, do you think there is any discrimination toward Mexican-Americans in the Grand Jury system?

A Definitely, yes. For the past 30 years, there has only been five Mexican-Americans to serve on the Grand Jury and there have only been two Mexican-Americans that have been Jury Commissioners.

Q All right. And is there any correlation between the number of Mexican-American Grand Juror Commissioners and the number of Mexican-Americans that have actually served on the Grand Jury?

A Well, the only time that any Mexican-Americans served on the Grand Jury was a specific incidence where a Mexican-American was a Jury Commissioner.

Q Now, have you ever served on a Grand Jury?

A No, I have not.

Q Have you ever been selected or -- by a Jury Commission to serve on a Grand Jury?

A Yes, I was.

Q And why? Was there any particular reason why you did not serve?

A I was stricken off.

Q And when you say "stricken off", what do you mean you were stricken off?

A I was listed as one of the top 12 in the Grand Jury list and the Judge removed me from that spot and put me in a lower number.

Q And the Judge you are referring to is a District Judge of Dallas County?

A Right.

Q Any particular reason why you were stricken?

A His criteria for removing me was that I was too controversial and too young.

Q And how old were you at that time?

A 24.

Q Do you know of any District Court Judges in Dallas County who are Mexican- American, or with Spanish surname?

A No.

Q Do you know of any County Court Judges who are Mexican-American or with Spanish surname?

A No, I do not.

Q Do you know of any City Court Judges of the City of Dallas who are Mexican-American or have Spanish surnames?

A Corporation Court Judge - one.

Q Yes. And who would that be?

A Judge Juarez.

Q How long, if you know, has he been a Judge?

A Less than a year.

Q And is he a full-time or part-time Judge?

A I think he is a full-time Judge, sir.

Q Now, do you know any Justice of the Peace that are Mexican-Americans?

A No, I do not.

Q Do you know any member of the Dallas City Council that are Mexican-American?

A Yes, I do.

Q And how many would that be?

A One.

Q And how many members of the council?

A 11.

Q Now, do you know any Mexican-Americans that are on the various Boards, Commissions, appointed

positions of the City of Dallas?

A There are approximately 6.

Q Out of the entire City of Dallas?

A Right.

Q Now, have these appointments come about recently, or are they of longstanding?

A They are very recent.

Q Now, is there any discrimination, in your opinion, in terms of the education of the Mexican-American in Dallas County?

A Yes, sir.

Q And where would this be evidenced at?

A Retention levels of Mexican-American children in schools, dropout rates, hiring practices, of personnel in the schools, and quite a few other areas.

Q Did the Dallas School District case have any specific provisions for Mexican-Americans?

A Yes.

Q And just briefly recite for the Court the three positions that the Court ordered specifically created for Mexican-Americans.

A Well, I think the most important thing in the Court Order was that District Judge William Taylor recognized Mexican-Americans as being a separate minority

group, identifiable minority group, and in his Court Order he acknowledged the fact that the bilingual program was beneficial for the Mexican-American and he ordered the school district to hire three top Mexican-American administrators for the D.I.S.D. -- the Dallas Independent School District.

Q Were they, in your opinion, -- was there some racially identifiable school comprised with the Court Order?

A Yes.

Q And would that be Pinkston, Crozier Tech, A.P. Allen, and William B. Travis?

A Those are a few, yes.

Q Some of these schools, were they greatly identifiable as Black-American schools or as Mexican-American Schools, or as both?

A Both. There are elementary schools that are identifiable by 95 percent or more Mexican-Americans and then there are some junior highs and high schools that are 90 percent or more minority, which means black or brown.

Q Now, I want to ask you some questions about the population makeup of the Mexican-Americans in the City and the County of Dallas, and ask you to describe for me -- I have here what is on the board -- what has been marked as Exhibit 143, and this is a map of Dallas County. The orange areas here, the record will show, are those areas that are predominantly Black-American. Now, I would ask you -- 143-2 is the exhibit number. Now, if you would, describe for me where the Mexican-American in Dallas County resides.

A The Mexican-American, or Chicano population in Dallas is scattered throughout the City. There are some identifiable pockets of Mexican-Americans that are geographically isolated throughout the City. One of those is where I grew up, which is called "El Barrio", or Little Mexican Village, which is in north

Dallas -- Short North Dallas area.

Q Now, what streets would that entail in terms of the little Mexico area?

A The Little Mexico area is different to what El Barrio is. El Barrio is the area all around and includes Little Mexico -- Little Mexico Village, or the project areas -- the housing project areas, and that is on Harry Hines and Wolf Streets.

Q Would that be that area described here between these two predominantly Black areas?

A Yes.

Q And has the Mexican-American moved up Harry Hines Boulevard and up toward the Love Field area?

A That is the northward expansion. They have also moved south into Oak Cliff and east into Short North Dallas, and East Dallas.

Q All right. Now, when you talk about East Dallas, which streets or what part of the City would that be in?

A I am talking about the streets that run parallel into Ross Avenue; Peak, Carroll, San Jacinto -- there are a lot of streets.

Q Would that be the area that I am pointing to here, as far as Precinct 313, and is it

contiguous to the Black area that has been designated here?

A Yes, it is.

Q Are there any other areas or pockets where the Mexican-American lives in Dallas County?

A The largest pockets are in West Dallas; Precincts 411, 416, 417 and 415, I think. The lower area, which is called "La Bajada Barrio", that is off Kennedy Drive and Silbin. And then the extreme area, Precinct 411, which is Ledbetter, that is the other area and there is another area called "Los Altos", which is right next to La Bajada.

Q That would be right in this area? (Indicating)?

A Right.

Q Now, these are three areas, Los Altos, La Bajada and Ledbetter areas, these areas are contiguous to what has been marked in the Black area here? Is that right?

A Right, they are -- they surround a Black area - - a large Black area, which is the center part of West Dallas.

Q Now, would it be a fair statement to say that throughout this Black area here in West Dallas,

There are some Mexican Americans who live within the Black neighborhood?

A Intermittently there are two other small Barrios within the Black area. One is in the housing project, Elmer Scott, and there is another very small Barrio called "La Estrella".

Q Now, are you familiar with the project called "Colonia Tepeyac"?

A That is an extreme Ledbetter area -- Ledbetter-Eagle Court area, which is near the Loop 12 area.

Q And Colonia Tepeyac is a 280 unit multi-family project? Is that correct?

A Yes. Predominantly Mexican-American.

Q Predominantly Mexican-American? And now the federally funded project in the Little Mexico area, is that predominantly Mexican-American?

A It is over 95 percent Mexican-American.

Q Now, are you familiar with Grand Prairie, Texas, which is in the far part of Dallas County?

A A little bit, yes, sir.

Q Are you familiar with an organization known as "LULAC"?

A Yes. They have a similar project to

Colonia Tepeyac, which is called "LULAC Village". Which is found in Grand Prairie.

Q All right. Now, do you know what the makeup of that project is?

A It is predominantly Mexican-American.

Q And is there any Mexican-Americans that live in the area which is adjacent or close to this particular Grand Prairie area known as Cockrell Hill?

A Yes, it is mixed.

Q Now, do you have or have you studied any census population figures for 1970 pertaining to the Mexican-American in Dallas County?

A There are no figures through the census that relate to the Mexican-American. I can only project and use speculation on the number of Mexican-Americans in Dallas. I use Dallas Independent School District figures, and my personal projection is roughly 75,000 Mexican-Americans in the Dallas area.

Q All right. Now, the record will show that there was testimony that in 1960 there were roughly 29 to 30,000 Mexican-Americans in the Dallas County area. Do you know whether or not the Mexican-American in this 1970 census had an opportunity to designate himself as a Mexican-American or Spanish surname on the

actual census information?

A No. I personally received a lot of complaints when I was with the Human Relations Commission concerning this specific item. A lot of Mexican-Americans were confused on how they would call themselves, categorize themselves, or classify themselves. Many classified themselves as "others" and would include "Mexican-American" or "Chicano", or "Latin American". Some classified themselves as "white" and some did not classify themselves at all. They did not fill out their census figures for that reason.

Q Now, using the projected school figures for the Dallas Independent School District, do you have an idea of how many school districts were in the DISD in 1960 are Mexican-American descent, or Spanish surname?

A Roughly 7 to 8,000.

Q Do you have any idea today how many that are in the --

A -- exactly. 16,000.

Q What percentage of the school population does the Mexican-Americans make up in the DISD?

A As of last month, this year, the Mexican-American enrollment in the public schools in Dallas was 18 percent.

Q Is that an overall figure or elementary level?

A That is overall the three levels.

DE - Martinez 735

BY MR. HERNANDEZ:

Q Now, I am going to ask you -- I believe you were in the courtroom when Councilman Allen testified about the Citizens Charter Association. You are familiar with that organization?

A Yes, I am.

Q Have you been affiliated with it, or what connection do you have with the organization, if any?

A The ex-President of the C.C.A., the Citizens Charter Association, was the Chairman of the commission that I was employed by.

Q There has been some testimony in the record, and I would ask you if you are familiar with an organization known as the Democratic Citizens for Responsible Government?

A I have heard of it, yes, sir.

Q Now, do you know whether or not there are any Mexican-Americans, Executive Director, Board of Trustees or in high decision level making capacity of the Citizens Charter Association?

A None to my knowledge. I know a member, but that is about it.

Q Do you know how many members there are of the Citizens Charter Association that are Mexican-American?

A I know of only two.

DE - Martinez 736

Q I would ask you for the DCMC. Do you know any Mexican-Americans or Americans of Spanish surnamed descent who are Executive Directors or on the Board of Trustees or Directors or who have high decision-making capacity?

A No.

Q Is there any connection in your opinion between the people of the Citizens Charter Association and the DCMC?

A Well, they coincide in personalities. In many cases they are the same individuals in both organizations.

Q Now, do you know whether or not there has ever been in the history of Dallas a legislator from Dallas to the State House of Representatives who actually resided within these pockets or ghetto areas that you have testified in terms of Little Mexico, West Dallas, La Bajada, Los Altos and these type areas?

A No.

Q How----.

A I know one who ran unsuccessfully, but I don't know one who has been elected.

Q O. K. I want to briefly ask you in terms of the city elections. You heard me ask Councilman Allen

about Anita Martinez. She ran as a C.C.A. endorsed candidate?

A Yes.

Q Were there any Mexican-American candidates that ran as not C.C.A. candidates?

A There were two.

Q Do you know how many votes they got?

A Approximately a little over 6,000 apiece.

Q Would it be a fair statement to say that most of these votes came out of minority groups, black and Mexican-Americans?

A Predominantly black and Mexican-American, yes, sir.

Q Now, do you have an opinion as to whether or not a Mexican-American could be elected in the multi-member district which is presently set up for Dallas County?

A I personally don't think so.

Q Do you think he could be elected if he were in a single member district?

A Yes, definitely.

Q Now, is there a particular area within Dallas County that encompasses 74 or 75,000 Mexican-Americans in one concentrated area?

A No. As I said previously, there is no

particular area where you will find, say, a large percentage of Mexican-Americans, say, over 2,000 families or 1,500 families.

Q Well, if there were single member districts established, regardless of how they were set up within Dallas County, would there in your opinion be any districts where the Mexican-Americans would be a substantial portion of the population of that district?

A Well, a portion, yes, sir, right.

Q And in your opinion would that substantial portion of Mexican-Americans have any impact on a potential election of a candidate from a single member district?

A Yes. Basically, because most of the areas, most of the barrios are contiguous with black ghettos.

Q Would there be any areas or districts that were created as single member districts where the black American and Mexican-American together would become a majority of the residents of that particular area?

A In some, yes.

Q And do you have an opinion as to how many districts that might be?

A I think about two or three, yes.

Q Would it be a fair statement to say that the Mexican-Americans who live in these areas and the black

DE - Martinez 733

Americans, that they are of the same social and economic and housing make-up?

A Yes.

Q Do you know any Mexican-American from Dallas County who has ever won a legislative seat from Dallas County?

A No.

Q Do you know any Mexican-Americans who have run for office from Dallas County for the Legislature?

A Yes.

Q How many would that be?

A One.

Q And over what period of time would this be?

A That was 1963, and he was Joaquin Bolivo Garcia.

Q Do you have any opinion as to why there are not more Mexican-American legislative candidates?

A Well, basically, the Mexican-American in Dallas is not involved or is not allowed to participate in the pre-election process. He is excluded.

Q Now, do you know of any Mexican-American who has won any office county-wide in Dallas County?

A We have one Mexican-American Precinct

DE - Martinez 740

Chairman in Dallas.

Q He doesn't run county-wide, does he?

A No.

Q I wanted to ask you if you have an idea as to what it would cost to run a legislative candidate county-wide in Dallas County. Do you have an opinion on that?

A Oh, between seventy and a hundred thousand dollars.

Q Do you know -- I think the record will show that there were approximately 494,000 registered voters in Dallas County in 1970, and if you were to run or had to run county-wide and did one mailing, do you have any idea as to what it would cost you approximately to mail one piece of literature to every registered voter in Dallas County?

A The first mailing, roughly 30 or 40,000.

Q Now, assuming that we had single member districts and there were approximately 74 to 75,000 residents and you had to mail to 50,000 voting registrants or residents, do you have an idea as to what that mailing would cost?

A Well, mathematically, you would cut that in, say, about a fifth.

Q So then it would be somewhere around -- if you had to mail to 40,000, for postage only, it would be a fair statement to say that it would cost you about $4,000.00?

A Yes.

Q In other words, mathematically, would you agree if you had to run county-wide you could send one mailing for 32,000 to 400,000 registered voters, but if you had to run district-wide you could send eight mailings of $4,000.00 each to county voters?

A Yes, that would just be one mailing, yes.

Q Right.

Do you have an opinion -- let me ask you -- have you ever had occasion to do what is called door-knocking in a political election?

A Many a time.

Q In what area did you particularly work?

A Little Mexico, El Barrio, and the West Dallas -- almost every Mexican-American barrio.

Q Now, do you have an opinion as to whether or not it would be effective to do door-knocking in a single member district election?

A Oh, definitely.

Q And I want to ask you also in terms of the

DE - Martinez 742

representatives that have represented Dallas County, the delegation, whether or not in your opinion if there had been Mexican-Americans representing a part of Dallas County, whether or not they would have been more effective representatives of the Mexican-American community than the legislators we have had.

A I can only speculate. I would say yes.

Q Let me ask you, do you know of any Mexican-Americans who have been appointed by legislative committees in Dallas County?

A No.

Q Do you know of any significant legislation benefiting the Mexican-American in Dallas County directly that has been offered, sponsored and passed into law primarily at the institution of the Dallas legislative delegation?

A None.

Q Now, are you familiar with the single member district setup that is utilized in Harris County?

A Yes, a little bit.

Q And do you know a state representative, Lauro Cruz?

A Yes.

Q And is he a Mexican-American?

DE - Martinez 743

A Yes.

Q You know that he is elected on a single member district basis in Harris County?

A In Houston, right.

Q Now, does the Mexican-American in Dallas have the same opportunity to elect a Mexican-American representative?

A Not in the multi district, so, we don't.

Q Do you think that is fair?

A I personally don't think so.

Q What do you think is unfair about it?

A Well, the fact that we don't have single member districting, and we can't have our say as far as selecting someone from the particular community, whether black, brown or white, and also from being allowed to participate, as I stated before, in the pre-election process, whether it is going to be slated or whatever. We have not been included. We have been systematically excluded.

Q Now, I want to ask you -- you heard the testimony of Dr. Cotrell from St. Mary's University. In terms of whether or not a multimember district is inherently discriminatory or whether just the way it has been applied in Dallas County is discriminatory toward the Mexican-

DE - Martinez 744

American---?

A I think in Dallas, Dallas is the prime example of how it inherently discriminates against the Mexican-American. It is the prime example.

Q Would it be a fair statement to say if the Mexican-American in Dallas had not suffered discrimination in the past in the areas that you discussed, education, economic development, housing and employment and could finance a campaign and had access to the media as to the slates that are slated in Dallas County, whether or not it might not be discriminatory for him, but that under the present system as it applies to the Mexican-American of Dallas, it is discriminatory?

A Yes, but we would have a better chance.

Q Would it be a fair analogy to correlate that to the way the Dallas County Grand Jury system has been used to discriminate against Mexican-Americans?

A In a similar manner, yes.

Q In other words, the Grand Jury system itself may not be discriminatory, but the way in which it has been applied---?

A Method of selection, yes.

Q Now, would it be a fair statement to say then that Dallas is a particular case where the multimember

DE - Martinez 745

districts operate to minimize or cancel out the voting strength of an ethnic recognizable group, to-wit, the Mexican-American, of the voting population of Dallas County?

A We are excluded, right.

Q That would be a fair statement?

A Right.

Q I just want to ask you one or two other questions.

I would ask you to relate to the Court your education and experience in whether or not you have lectured and taught courses and worked with Mexican-Americans from the valley of Texas and whether or not in your opinion there is a distinction between what I would call a big city Mexican-American and a valley Mexican-American?

A Well, as I stated before, I was employed by Southern Methodist University upon graduation to work in a survey conducted by the Urban Studies Institute at S.M.U., in which we interviewed over 700 Mexican-Americans from the valley who were brought to LTV in Grand Prairie, and a lot of the study was dealing with the culturation levels of Mexican-Americans and how they have either become accustomed to an urban setting, and a lot of the differences and difficulties that they have in coming from a predominantly rural setting.

DE - Martinez 746

Q Would it be a fair statement then to say there is a difference between them?

A There is quite a difference in culturation levels between a rural Chicano and an urban Chicano.

MR. HERNANDEZ: Pass the witness.

JUDGE JUSTICE: Is there further examination from the Plaintiffs?

MR. LUNA: I have some, Your Honor.

JUDGE GOLDBERG: You have some?

MR. LUNA: Earl Luna, representing Defendant Roy Orr, State Chairman of the Democratic Executive Committee.

CROSS-EXAMINATION

BY MR. LUNA:

Q Mr. Martinez, where did you say you lived in Dallas County?

A Live in Dallas County presently?

Q Yes, sir.

A 6176 Fisher.

Q Where is that?

A That is off Northwest Highway and Skillman.

Q All right, sir. If we pointed to -- I believe this is the Little Mexico area where you grew up (indicating), is it not?

A Right.

Q Now, with relation to that, where do you live? Would it be---?

A Northeast Dallas.

Q Northeast Dallas?

A Right.

Q Right in here somewhere (indicating)?

A Right.

Q So out in the area where you live, are there many or very few Mexican-Americans or blacks who live in the area where you do for a mile radius?

A In my complex there are only three Mexican-American and blacks, the apartment complex I live in.

Q Yes, sir, and for a mile or more radius of where you live there are still either no more or very few more, right?

A Right.

Q Now, isn't that an example of the dispersement of the Mexican-American population generally in Dallas County with the exception of those two or three pockets that you have told about?

DE - Martinez 745

A Well, I think I am an exception, because my wife attends school at S.M.U., and I have to live there, because she has no transportation.

Q All right. You know that we have quite a number of Mexican-Americans scattered around in the Garland community, don't you?

A Yes.

Q And Carrollton?

A Some, right.

Q They are exceptions, too?

A There are very few, right. The majority of them are either middle class, upper middle class Mexican-Americans, professionals, a lot of them acculturated Mexican-Americans.

Q But Mexican-Americans, nonetheless?

A I call them Mexican-Americans. They might not consider themselves Mexican-Americans.

Q So, in Dallas County would it be fair to say rather than the Mexican-American population being concentrated in a particular area, that it is more dispersed and is, in fact, assimilated with the rest of the population?

A No, I don't use the word "assimilated." They are dispersed geographically but they are not

DE - Martinez 74-5

assimilated.

Q So there is no area in Dallas County where the Mexican-American, even if we gerrymandered a district, there is no area in Dallas County where you could have a contiguous district, much less compact, that would be composed of anything approaching 50 percent of a 74,000 population---?

A No, as I stated before, in the entire city there is only approximately 70 or 75,000 Mexican-Americans.

(No omission here.)

Cross - Martinez 750

Q Now, isn't one of the problems that the Mexican-American population is facing is a language difficulty?

A Well, personally, it is not our problem, no.

Q Well, some of the children have got -- we need to solve the problem of teaching the children the bilingual?

A Right. The problem is allowing all children to be bilingual.

Q Yes. Now, would you say that that problem is the same with the whites and Blacks?

A Well, most Blacks and most Anglos are monolingual, so they obviously have a problem linguistically.

Q Okay. You mentioned, I believe, Anita Martinez?

A Yes.

Q She is Mexican-American?

A Yes.

Q And, she ran for the City Council and was elected on the Citizen Charter Slate, was she not?

A Yes.

Q Who was her opponent the first time?

A Frank Hernandez.

Q The Frank Hernandez that just questioned you?

A Yes.

Q And, he was not on the C.C.A. slate?

A No, he was an independent.

Q He was an independent?

A Right.

Q And, she was elected in that race?

A She was on the C.C.A. slate, right.

Q You mentioned that the C.C.A. and the D.C.R.C. were the same people. Mr. Martinez, isn't it a fact that the C.C.A., Citizens Charter Association is a City of Dallas type organization, that is correct, isn't it?

A Synonously, yes, right.

Q On the other hand, the D.C.R.C. is a County-wide organization which works in Democratic politics in all of the municipalities in Dallas County, is that right?

A Yes, sir.

Q So, then, we are talking about not the same people, are we?

A They overlap. There is a lot of local

city businessmen who belong to C.C.A. who are officers in D.C.R.G. who also are involved in County affairs, so it is repetitious.

Q Now, you mentioned that we had one Mexican-American precinct chairman; what is his name?

A Henry Martinez.

Q What is his precinct -- is it 411?

A I think it is 411. In fact, yes, I am sure it is.

Q You think it is 411? Now, in Dallas County, the -- That is, a Democratic precinct chairman isn't it?

A Yes.

Q In Dallas County, you are aware that the precincts have something less than 300 voters in each precinct, are you not?

A Approximately, yes, sir.

Q In other words, you know that under the statute 3000 is the maximum?

A I am aware of it, yes, sir.

Q And, you are aware, also, that Precinct Chairmen are elected from the people living within that 3000 or less group?

A Yes, I have been told that. Yes, sir.

Q In other words, the precinct chairman are elected from the single member district; that district being the precinct in which they lived, composed of not more than 3,000 votes?

A Yes, theoretically that is the way it is set up.

Q Now, with the County being broken down as it was last year, into three hundred one precincts, we were only able to elect 1 Mexican-American precinct chairman outof the whole bunch, weren't we?

A Yes, sir.

Q Do you know Mr. Richard Manchaca?

A Yes, I do.

Q Who is he?

A He is a teacher at -- is a local junior college.

Q El Centro Junior College?

A Yes, right.

Q If Mr. Manchaca said this -- or whether or not he did, I am going to ask you if you agree with it, please, sir. With respect to why there has never been a member of the Legislature elected from Dallas County, and as to why he would rather run at large than in a single member district, would you agree with this; my reasoning

is that heretofore, we have never been politically aware, as much so, as in the last two or three years. It is coming on. We are becoming increasingly aware of political power that we might be able to use. Would you say that is a fair statement?

A No, I wouldn't agree with it totally.

Q All right. On the cost of campaigning, isn't it a fact that it is a practice in Dallas County for groups, whether it is the citizen charter association or any other D.C.R.G, or any other group that is working for candidates when they are running a slate, they will run an ad in the paper for 18 and put everybody's name on that one ad?

A That has been the practice in some cases.

Q So, then, 18 have the benefit of an ad, whereas, if they were running separately in individual districts and not on a ticket, it would take 18 separate ads to give them the same recognition if the ads were run separately, would it not?

A What was your question again?

Q Isn't it cheaper where people run together on a team for politics and run one newspaper ad asking folks to vote for all 18 of these people then for

each of them to run one ad of the same size?

A I don't think so. I think it depends on the exposure of the media over the individual candidate.

Q Many of the Mexican-Americans in Dallas County have immigrated there from other parts of Texas and other areas, have they not?

A A large number, yes.

Q Would you say a majority of them?

A I couldn't tell you definitely. We are working on those figures.

Q But, your best judgement is that a majority of them did come from other areas?

A I really sincerely couldn't positively tell you exactly if that is true or not.

Q So, then, as far as the education is concerned, whatever the educational level of those who came from other areas who had already finished school, they either got, or didn't get their education in that area where they came from and are not related to the Dallas School District, are they?

A In some cases, yes. But, in other cases where you have second, third, fourth generation Mexican-Americans -- or generation Mexican-Americans -- that are Dallasites, you still have the correlative statistics,

educational statistics, in dropouts. So, there is a lot of similarity educationally.

Q Richard Moncheca is well-educated, isn't he?

A Yes.

Q He understands the problems of the Mexican-Americans relatively well, as well as you are concerned?

A That is debatable.

MR. LUNA: Thank you, sir.

JUDGE GOLDBERG: Any other questions?

MR. HERNANDEZ: I have one question, Your Honor.

CROSS EXAMINATION

QUESTIONS BY MR. HERNANDEZ:

Q Mr. Martinez, I just have one question. Mr. Luna has asked this of other witnesses, and I would ask you: what is more important in order to be elected in Dallas County, if you are a Mexican-American, support and manpower and financing and organization, such as the B.C.A.G. or the question of a single member district?

Cross - Martinez 7557

A Well, I think you know any election needs manpower and financing, but I wouldn't agree that single member districting is the important thing.

Q Do you have any particular reason for that?

A Well, just experience and history as far as Mexican-American situations and candidates in Dallas and the aspirations of many Mexican-Americans to run for office in Dallas.

Q Let me ask you if it would be a fair statement to say that the Mexican-American -- and this may not be so for a middle-class white American or upper class white American, at least in Dallas -- but for the Mexican-American in Dallas, is it a fair statement to say that it is certainly true that the most important factor in the election would be the creation of single member district?

A Yes, definitely.

MR. HERNANDEZ: Thank you.

JUDGE GOLDBERG: Anyone else?

MR. IDAR: Your Honor, that concludes our witnesses. However, there are two or three matters I would like to take up with the Court before we rest our case. Number one, I am not certain whether our

record reflects the total population in the tracts that Mr. Korbel testified to yesterday. I don't recall if we actually established that for the record, so I wonder if the State would stipulate on that information with us to save having to recall Mr. Korbel -- that the total population of the 27 tracts in 1960 by Mr. Korbel -- testified to yesterday -- is 211,780 people; that of these 166,332 were Mexican-American and 8,322 were Black, according to a 1960 census. 758

MR. CURRY: We will so stipulate.

MR. IDAR: With respect to the 1970 census, in which case the 27 tracts became 28 tracts, we would like to stipulate that the total population in 1970 was 197,470 and the Black population was 7,835 and that the Mexican-American ethnic breakdown is not yet available, based on the 1970 census figures.

MR. CURRY: That information is from the census, 1970?

MR. IDAR: Yes.

MR. CURRY: We will so stipulate.

MR. IDAR: Your Honor, I believe I had better clear up a thing. My notes don't reflect whether or not -- don't reflect if I actually made it known to counsel that I was tendering exhibit BI-9 -- BI number 9, which is a set of campaign expense reports that have been filed with the County Clerk of Bexar County. I wonder if Mr. McDaniel would like to examine this at this time and see if he has any further objection. 759

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MR. MCDANIEL: No, sir.

JUDGE GOLDBERG: No objection? Received.

MR. MCDANIEL: Not other than noted in the pretrial.

JUDGE GOLDBERG: Yes.

MR. EDAR: DI number 9, then, is -- Okay. Now, Your Honor, one more thing. We have, as the Court is aware, plead, relying to some extent on certain language in the Chevis case, relating as to the distinction between the Indiana and the Texas system. For the purposes of this case, I would like to read a series of the Indiana statutes, but I would like to request that the Court take judicial notice of -- if the Court will allow me to do that.

JUDGE GOLDBERG: Well, there is a statutory method for introducing -- go ahead. Do you have any objection to it?

MR. CHERY: I was just going to suggest, for the purpose of saving time for the Court, that he simply prepare copies of them and make exhibits and submit them to the Court for the Court's consideration.

JUDGE GOLDBERG: Can you make copies?

MR. IDAR: I will be glad to do that. I have talked to Mr. McDaniel about this and he simply suggested that I request the Court to take judicial notice.

JUDGE GOLDBERG: It will save us time if you will just make copies and we will all have them.

MR. IDAR: I will be glad to do that. Now, one other matter that I would like to request some guidance from this Court as to how to proceed, this consolidation of the four cases in one trial has me uncertain as to the legal procedure. I have a series of cases that have been tried in different districts, federal districts of Texas. Some of these are reported cases and others, as far as I know, may not yet be recorded, but they are all cases that relate in one form or another to the Jury actions of the State of Texas; statutes that have been set aside by the Courts, to new statutes that have been enacted as a result thereof. The opinions reflect certain findings as they effect the Mexican-American population,

all of which I think would be material and would be relevent to the consideration of this case, based on the allegations that we have plead in our complaining intervention. And, I have again discussed this with Mr. McDaniel and he simply suggested that I draft a memorandum and submit it to him and to the Court listing the cases that we are concerned with.

JUDGE GOLDBERG: You mean legal precedents?

MR. IDAR: Yes, sir.

JUDGE GOLDBERG: We will get to that in a little bit.

JUDGE WOOD: You mean this is in the form of authorities on which you are relying?

MR. IDAR: I am not citing them for the purpose of the law involved, but because some of these opinions actually contain some very significant findings of fact by the Courts -- not only that, but I think it is crucial that the Court --

JUDGE JUSTICE: Perhaps you could give us an example.

MR. IDAR: Well, Your Honor. 765
the series of orders that have been entered in United States of America versus the State of Texas, both as related to the basic case and the intervention between the Del Rio and the San Felipe School District. I think, for the purposes of this case, for example, it would be very significant, I believe, the fact that the Texas Education Agency has been enjoined from taking certain actions by this particular Court.

JUDGE JUSTICE: What is more to the point, it was a case that was affirmed by the Fifth Circuit.

JUDGE WOOD: Couldn't we stipulate that has happened for the purpose of this record?

MR. IDAR: I wanted to do so, and I so suggested to Mr. McDaniel, and he has suggested that rather than do that, that I submit this list of cases to the Court and what they involve.

MR. MCDANIEL: As I understand it, what he wants to do is he wants to cite cases as examples of discrimination that the State has

been guilty of, and I suggested he 764
do it in memorandum form, because you have got the case report and you can certainly read the cases and see what has been held in each of them and any that were not reported in the book. I suggested he merely furnish a memorandum or copy of the memorandum opinion to the Court.

JUDGE WOOD: Wouldn't that be sufficient?

MR. IDAR: If that is all right with the Court, we will be glad to do it that way.

JUDGE GOLDBERG: Fine.

MR. MCDANIEL: We, of course, don't agree to the relevancy.

JUDGE GOLDBERG: I understand.

MR. MCDANIEL: Thank you.

JUDGE JUSTICE: What other cases, briefly, do you have there?

MR. IDAR: Well, to give the Court some idea --

JUDGE JUSTICE: I am doing this for the Tyler case only.

MR. IDAR: We have the Corpus Christi and the Cisneros case, which was decided.

JUDGE GOLDBERG: Wait a minute. How

far are we going with this? These cases have been decided, haven't they, by District Courts or Courts of Appeal and are in the books. 765

MR. IDAR: Yes, sir.

JUDGE GOLDBERG: They are legal precedents and what they stand for and the fact findings that are represented by these cases will be reflected in the Court's opinion.

MR. IDAR: Fine.

JUDGE GOLDBERG: I don't understand. Are you suggesting that the record should be encumbered with these legal precedents?

MR. IDAR: I was suggesting that some of these cases the records reflect the fact that the Texas Legislature acted pursuant or because of the Federal Court action that has taken place.

JUDGE GOLDBERG: Well --

JUDGE JUSTICE: Well, submit it in the form of a memorandum.

MR. IDAR: Well, we still have not settled the question with the State, Your Honor, as to these last portions of the evidence of

Mr. Korbel relating to the unfinished work that we had on the voting patterns of the northern portion of San Antonio. The Court had indicated to us that we try to arrive at some type of an agreement with the State so that we could complete that study and submit a post-trial memorandum to the Court. I haven't been able to work out anything satisfactory with the State, so before resting my case, I would like to see what we are going to do about that. 766

MR. MCDANIEL: I am not sure what this study is directed to or what it is supposed to show. If that could be explained to me, perhaps we can stipulate.

JUDGE GOLDBERG: What do you want it to show?

MR. IDAR: We made a study showing that in the 27 tract area, the voting pattern of the population, for example, that Mexican-Americans will generally tend to vote for Mexican-Americans. We are proposing to make a study of a substantial portion of the rest of the City to show that in these other areas the Anglo American people will vote against a

Mexican-American candidate from as high as from 6 to 1, to 9 to 1; that is the reverse of what we have already introduced. 767

JUDGE GOLDBERG: When would such a study be completed? We can't -- we have got to step this case at some point.

MR. IDAR: I realize that, Your Honor, but that was the reason I suggested a post-trial memorandum. I believe we can finish the work and have the memorandum to the Court by Monday.

JUDGE WOOD: That is too late. Can't you get somebody to come up here and testify to this? I mean, we are going to finish this case by noon tomorrow.

MR. IDAR: I can have Mr. Korbel take the stand, then, to testify how far he has got on the preliminary study made.

JUDGE GOLDBERG: Unless you have another suggestion.

MR. MCDANIEL: I have no other suggestion. I was just going to say that obviously we will object to this as showing that the vote is against Mexican-Americans as opposed to the candidates, because there

is no way this study can go into 760
the minds of the voter to show what -- nor I would think, could you pin that down to percentages either in the precincts. It seems to me it is too speculative to be of prohibitive force.

JUDGE GOLDBERG: If you have got a witness that you want to tender at this time, tender him. Let's hear what he has got to say. Let's hear objections to the testimony and let's get this thing moving. 765

MR. IDAR: All right. Mr. Korbel, will you take the stand?

JUDGE GOLDBERG: Let's get the show on the road.

MR. KORBEL, was recalled to the stand by Mr. Idar;

DIRECT EXAMINATION

QUESTIONS BY MR. IDAR:

Q You are the same George Korbel that testified yesterday?

A Yes, sir, I am.

Q At one point in your testimony, you indicated that you had started to comprise certain data relating to the voting patterns in the northern part of the City of San Antonio?

A Yes, sir, I did.

Q Will you refresh our minds, as to the type of studies that you were making?

A Well, if you will remember, we did the study on those 27 or 28 contiguous census tracts, depending upon whether we were doing the '60 census or the '70 census. Since the '70 census data with respect to the breakdown on minorities, is not available, we had to use the 1960 census figures. Now, on information and belief, it is our understanding that while the population is slightly declining within the barrio area, nevertheless, the Mexican-American density, as that terms has been used, has increased substantially. Using the 1960 census figures, I tried to pick out very high density Anglo precincts. Now, we picked those out by corresponding those precincts from those census tracts. I picked out what I felt were nine separated highly densely populated Anglo precincts and I ran a preliminary study on those precincts. That preliminary study indicated, as I said, yesterday, that the vote ran from 6 to 1 to 9 to 1 against the Mexican-Americans, while at the same time, the vote from the Barrio, or those 27 tract precinct areas, ran approximately the same, a little less in favor of the Mexican-American. I don't have the study completed, but that was --

JUDGE COLDBERG: -- that was your preliminary conclusion?

A That was my preliminary conclusion. I think when we have the '70 census data, we will be able to isolate the angle precincts and will show that more conclusively.

Q That is as far as you were able to get--

A -- that is as far as I am able to go.

JUDGE GOLDBERG: He has testified that up to now, that is what he concurs. Now, do you want to go into --

MR. CERNY: -- we will accept it as a preliminary report, Your Honor.

JUDGE GOLDBERG: All right.

(The witness stood aside).

MR. IDAR: Your Honor, I previously advised the Court that we had been expecting and still are, some 1970 census data relating to Bexar County, showing the breakdown of the Mexican-American population in the particular County. I understand it has been mailed in care of myself -- that is, myself in care of the District Clerk, so with that reservation, and I hopefully -- if that information arrives between now and the time this trial closes, I would like to leave that open.

JUDGE JUSTICE: We might state that at the Pre-Trial of this case, it was agreed that

Direct- Korbel

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if these census figures did come to the counsel before this case was taken under advisement by the Court, that they could be used, and subject to the objections of the State.

MR. CURRY: Yes, sir.

JUDGE GOLDBERG: Okay. Now, does that complete your case?

MR. IDAR: We are resting at this time, Your Honor.

JUDGE GOLDBERG: Republicans next.

MR. CROUCH: Yes, Your Honor.

If it please the Court, I would like to call as our first witness, Mr. Vick Robertson. While Mr. Robertson is --

MR. CURRY: -- excuse me just a minute.

MR. CROUCH: Yes, sir.

MR. CURRY: Your Honor, may I be excused for a moment?

JUDGE GOLDBERG: You certainly may.

(The witness was duly sworn)

VICTOR ROBERTSON,

called as a witness on behalf of the Plaintiffs (Republicans)after having been first duly cautioned and

sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. CROUCH:

MR. CROUCH: May it please the Court, if I might make a couple of comments about our case before we start our presentation, hopefully putting it in what I think should be the proper perspective, I would like to say at the outset that we are not contending that -- are not challenging the legislative Redistricting Boards action on the basis that it failed to create or give the Republicans a district. We are merely saying that due to the voting habits and patterns of approximately a half million citizens in northeast Dallas County who have common lifestyles and share common interests, socioeconomic interests, that the effect and design of this legislative Redistricting Board's plan dilutes, minimizes and cancels out the voting strength of that identifiable Republican element.

I would also state that we recognize that the burden is upon us to show that dilution or cancellination, but I think we have got to keep in perspective the language of the Chavis case -- the Whitcomb v. Chavis case, in which the Court very specifically recognizes that the size of the district or the larger the district the greater the tendency to cancel or minimize that vote.

Now, I would call attention to the fact to the Court that we have a County of a million, one hundred and -- a million, three hundred and twenty-seven thousand population. The population of Marion County in Chavis was 700,000. The population of Hawaii which was involved in the Fortune case was -- the entire state was only 700,000. So it is our contention that this is an extremely large multi-member district, and as such, minimizes or dilutes the voting strength of these people who have a common lifestyle and share a lot of distinct socioeconomic similarities.

Q Mr. Robertson, would you state your name?

A Victor F. Robertson, Junior.

Q Where do you reside?

A 4306 McKinney Avenue, Dallas, Texas.

Q All right, by whom are you employed, and in what capacity?

A I am vice-president of Lewis Boles and Grace, Incorporated.

Q What kind of work does your firm do?

A We are research and management consultants specializing in public opinion and marketing research.

JUDGE JUSTICE: Would you speak into the microphone?

A Yes.

Q Would you answer that question again?

A We are research and marketing consultants. We specialize in marketing and public opinion research.

Q What is your educational and professional background?

A I have my Bachelor's from Texas Christian University and my Master's in journalism from the University of Iowa. I have been in and around politics for 20 years now in Dallas County. I worked from 1962 to 1965 as a political and government reporter for WFAA radio and

television. Between 1965 and 1967, I was retained as a research consultant for the Republican executive committee for Dallas County and since June of 1967, I have been employed full time in political research and consulting with Lewis, Boles and Grace.

Q In your capacity as vice-president of Lewis, Boles and Grace, Mr. Robertson, what does that work involve?

A Physically, it involves getting together with political candidates or organizations or individuals interested in candidates, discussing their political problems and the nature of the districts that they tend to run in, designing a questionnaire conducting a public opinion survey, analyzing it, evaluating it and getting together with them and consulting and advising with them, designing their campaign strategy and tactics and finance and so forth with the object of winning the political campaign.

Q Does your firm do political research and consultation for all candidates of political parties political persuasions?

A Yes. We work for both democratic and Republican parties, and for example, in Dallas County, we have done work for the Dallas Independent School District

for the Citizens Charter Association, and for the DCRG and we have done, of course, work for conservative Democrats, the AFofL-CIO, as well as for the Republicans. Multi-parties, Your Honor.

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Q Now, the work done by your firm in preparing these political surveys and political polls and reports, is that done under your supervision and direction?

A Yes, it is. And in fact, the analysis and report writing of every political study that we have done for the last four years, with the exception of one which is being done by one of my partners today, has been done by me.

Q In the process of conducting political surveys and research, do you also gather data to give you the socioeconomic characteristics of the voters you are studying?

A Yes, we do. We gather information on age, sex, ethnic composition, income, membership in labor unions or partnerships in business organizations, level of education and all of these factors.

Q Mr. Robertson, do you have a copy of what has been marked as the DR Exhibit Number 1?

A Yes, sir, I do.

Q Would you identify that exhibit?

A Yes. This I have entitled "Election Returns Relating to Republican Voting Patterns in Dallas County, 1956 to 1970", and it is divided into

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a couple of sections.

The first one is "general election returns for major contested races" and this I have done by commissioners' districts, and I will relate this back in just a moment if I may, Your Honor.

The second section, which was what we were originally asked to undertake, is election returns for the area containing the alleged definable Republican majority. And these are related in turn to the appendix, which is a series of five maps.

The first one, which is also shown in larger style on the board, is the outline of the area which is alleged to contain the identifiable Republican majority.

Q That is a census tract map?

A Now in the second map then, the first commissioner's district of Dallas County, as it existed up through the year of 1967, is layed over that alleged area in green, which is designed to show that the area is largely one and the same thing. We have done this for the purpose of relating back to the prior election returns from 1956 to 1970, because during that period they were compiled primarily in terms of the commissioners districts, and therefore it is easy to relate the commissioner's district to this alleged area of the

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defined Republican majority.

Then for the years 1968 through 1970, we have presented the returns again for the census tracts which involve or are involved in this total majority.

The third map here shows the change that took place in the first commissioner's district in the year of 1968 and it relates to the precinct elections of 1968 and 1970, and the first commissioner's precinct are based on those.

The final two maps, the fourth one, shows the area of the third congressional district as it is apportioned under the new apportionment and which is gemrally acknowleged all of the way along the line to be basically a Republican congressional district with a Republican incumbent, and again it is designed to show the large similarity in area which is covered.

And the final one is designed to show the new eighth senatorial district, which again has a Republican incumbent, and again, a much similar area to what we are dealing with in the alleged identifiable area.

Now the returns themselves, going through these years, are for major contested races where Republican candidates were running. Although we have shown, also,

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in 1958, for example, the major state legislative race, and this was the first time the Republican Party in Dallas County ever ran anybody for the State Legislature at all.

Q When was that?

A 1958.

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BY MR. CROUCH:

A In subsequent years we are showing the races for the Senate where there is a significant contest or for Governor where there is more than just a token candidate, for Congress, and at the same legislative level we are showing the returns for the highest Republican vote-getter and the lowest Republican vote-getter.

Now, the Court may notice as it goes through here that in each instance in District 1, which is essentially the identifiable Republican area which is alleged here, in 1956 General Eisenhower got 76 percent of the vote, and the Congressional candidate, Bruce Alger, got 68 percent.

In 1958 the senatorial candidate for the Republicans, Roy Whittenburg, of Amarillo, over 60 percent. The same for Congress. In this race -- again, this is the first time the Republicans are running for the State Legislature. They got 39 percent with people who were totally unknown before they started running.

In 1960, as you will notice, the returns from this area, four Republican candidates who ran there, range from slightly over 50 percent all the way to 70 percent with the preponderance of them being over 55 percent.

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As you know, I am sure, in politics it is generally considered that 55 percent is the level at which you have what we call a safe district.

In 1962, because of the nature of the circumstances, you will notice that all of the races involved here run 56 percent or better and up to two-thirds.

In 1964, which was a totally abnormal year also, because of the assassination and the reaction to it, still the Presidential candidate got 55 percent of the vote. The senatorial candidate got 66 percent of the vote. Of the legislative candidates some carried, some did not.

Now, there were four incumbent Republican legislators running at that time. Three of them carried the first commissioners district. The fourth one lost by 20 votes. The other five candidates who were new were defeated in that tidal wave in '64.

In '66 the same pattern basically emerges. Here the lowest state legislator got 51 percent of the vote. The rest are running 54, 55, up to John Tower who got 74 percent of the vote.

And in 1968 essentially the same pattern here again. The lowest state legislator received about 56

DE - Robertson 24

percent of the vote, ranging up to 63 percent of the vote, and in 1970, again essentially the same pattern. The lowest state legislator received 56 percent of the vote, and it ranges up to 60 or 70 percent, practically, for the gubernatorial candidate.

Then the following returns related instead of just to the commissioners district, basically, along the same pattern to this whole area as defined in yellow as the alleged definable Republican area or the area of the definable Republican majority.

And in 1968 you will notice that here -- now, if the Court recalls, in 1966, and in 1968, this area of Dallas County was divided into three different Congressional Districts. Part of it was added to an area running out to Wichita Falls. Part of it was adjoined to an area southeast and northeast from there, and part of it running due south of there, so that the Congressional races reflected here reflect that portion, actually, and in some instances, particularly in the 5th Congressional District, a candidate who did not have adequate financing but still received 48 percent of the vote.

Basically, at the legislative level you will notice that the legislative candidates all are carrying in this area, the lowest return here being 54.1

DE - Robertson 785

percent of the vote.

And the same pattern emerges again in 1970. The figures would seem to indicate that over essentially the last 20 years that the people within the area basically outlined here have expressed the continuing preference for Republican candidates when those candidates have been in major contests.

Q Mr. Robertson, is it safe or can we conclude from these figures that in this area the voters have expressed a preference, when given the choice, for Republican legislative candidates since 1958 with the exception of 1964, which you say was an unusual year?

A Oh, I think even in the context of 1964, with the situation being what it was politically at that time, the fact that three of the four incumbents were in a sense re-elected by the people in this area is still indicative of their preference for Republican candidates.

Q What is the population of this area?

A Approximately 561,000 people.

Q Now, in the new Reapportionment Bill the new 3rd Congressional District, and I believe it is on the last map you showed and the new---.

A Next to the last.

DE - Robertson 786

Q Next to the last map?

A Yes.

Q And the new 9th Senatorial District, these are now held by incumbent Republicans?

A Yes, they are.

Q And are they generally referred to as Republican Districts?

A Yes, they are.

Q Do you consider them safe Republican Districts in your professional opinion?

A Yes, I do, and from what I have heard from the Democrats, they do, too.

Q Now, it is true that in Commissioners District 1 we have had a Republican commissioner since 1960?

A That is correct.

Q Mr. Robertson, also contained within this district there are two Republican Justices of the Peace elected, as I recall?

A That's right.

Q Judge Cole and---?

A Judge Patsig.

Q ---Judge Patsig.

And, as I recall, Judge Patsig was re-elected in the last election unopposed. Is that correct?

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A I believe that is true.

Q He did not have any Democratic opposition?

A No.

Q So his nomination in the Republican primary was tantamount to election.

In the area that has been defined, do you in your opinion consider that the voters in this area are Republicans and have expressed a preference for Republican candidates based on the history of these elections?

A Well, to answer the question, "Are Republican," is a rather difficult thing, inasmuch as there is no party registration in the State of Texas, therefore, no legal definition in that sense, but in the real sense when you finally come down to it, people are as they behave, and these people behave Republican, whatever they may be.

(LAUGHTER)

Q In your opinion, if we had something less than county-wide districts, even subdistricts as they once had in Houston, running by Commissioners Districts or by Senatorial Districts or by Congressional Districts or by individual districts, do you believe that these people would likely elect a Republican State Representative?

A The whole history of their electoral behavior

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says that the probability is that they would.

Q Mr. Robertson, in your professional experience have you had occasion also to advise and give counsel to prospective candidates, both Democrats and Republicans, as far as the running for political office and managing political campaigns and preparing budgets, et cetera?

A Yes, all the way from, you know, people like Lyndon Johnson and John Connally down to people running for the State Legislature.

Q What in your opinion would be, if you were advising a candidate, or perhaps if you have advised a candidate recently, what in your opinion would be, or what would be your advice to him, as far as getting elected to the State Legislature, running at large?

A Well, in the 1970 campaign there was an instance in which I had to do this, and from a financial point of view, which I gather is what you mean, we recommended that while it might be possible to get by because of relative unfamiliarity on the part of his opponent, of a budget of about $75,000.00, that it really ought to take $100,000.00 to $125,000.00, and this is based upon a kind of formula that we used, which is to say, with basically large electorates an efficient campaign, well-run, generally

DE - Robertson 789

can get by for about a dollar for every vote that you need to generate or to win.

Q In your opinion is it necessary if a prospective candidate wanted to run for the Legislature or a multimember district, would it be necessary that he use the television media extensively to reach a million three hundred thousand population or registered voters of approximately 600,000?

A A prospective candidate can do one of three things, really. He can run his own race, in which case the answer is definitely yes, because the people won't vote for a man unless they know him, and he's got to get himself known to them somehow as a political animal, and television is the only reasonable medium for doing this for the individual candidate.

Secondly, he can be run by a slate and let them pay the freight and basically ride, or third, he can just put his name on the ballot and stay home and hope.

These are really the only options he has. With this kind of mass exposure, you can't reach an electorate of half a million people.

Q Would this type of expenditure be necessary if he were to run in a single member district in Dallas County?

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A No, when we talk about a single member district, we are talking about 75,000 people roughly, and the way Dallas County runs, we are talking about an electorate of probably about 30,000. It may vary some from one place in the county to another, but on the average it will run about 30,000.

Then, if we talk about the Democratic Primary, we are talking about an electorate that will turn out at the rate of maybe six or ten thousand votes, out of which he has got to get five. He can run his whole campaign on two to three thousand dollars and be in good shape, to say nothing of being able to get on his feet and do something and really get to know the people.

This is where I think it imposes a tremendous burden on the candidate.

Q Mr. Robertson, during your experience in conducting political polls, have you had occasion to poll the electorate in Dallas County on the question of whether they prefer single member districts or whether they prefer multimember districts?

A Yes, on a number of occasions.

Q Did you testify before the Legislative Redistricting Board about the results of these polls?

A Yes, I did.

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Q Would you please describe to the Court what the results of those polls were?

A There were three that basically were involved, because they were property of litigants appearing before the Board, and those are the ones to which I was able to refer. The first one was one which was conducted in what was then the 23rd Senatorial District, basically that part of Dallas County which is southwest of the Trinity River, and that was conducted, as I recall, late in 1965 or very early in 1966, and at that point in time the division among those voters was relatively close with 41 percent at that point saying they preferred single districts, 39 percent saying county-wide was better, and 20 percent saying they had no opinion.

Then subsequently, we had an opportunity to conduct one in the 16th Senatorial District, which extended all the way from Richardson, which is the extreme northeast part of that yellow area there (indicating), and it kind of swings down the east side of the county and is more or less analogous to the county as a whole by being somewhat more Democratically inclined than the county as a whole would be, and at that particular point in time, there were nearly six in ten, 58 percent who said they wanted individual districts. Three in ten or 31 percent said

they would prefer to have it county-wide. Three percent said it didn't make any difference to them and eight percent had no opinion.

And then subsequently, late in 1968, we had an opportunity to do it on a county-wide basis, this being done for the Republican Executive Committee.

At that particular point in time again 61 percent said individual districts; 27 said county-wide; two percent said no difference; nine percent said no opinion.

JUDGE GOLDBERG: Is this a county-wide sample?

THE WITNESS: This is a county-wide sample, yes, sir, representative of the registered voters of Dallas County.

JUDGE GOLDBERG: And you use scientific sampling methods?

THE WITNESS: Yes, we do, we use modified probability samples, the same thing used by George Gallup and a variety of others in the industry.

JUDGE GOLDBERG: In a county-wide survey?

THE WITNESS: In a county-wide survey, yes, sir, and that basic trend and tendency has continued, you know, up to this time.

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Q That is approximately three to one in favor of single member districts, as opposed to multimember districts?

A Among those who make a decision, yes.

Q Yes, and you say in polls taken since that time that they have continued to show the same trend?

JUDGE GOLDBERG: Pardon me just a moment.

MR. CROUCH: Yes.

JUDGE GOLDBERG: When you posed the question for polling purposes, does your file reflect how you phrased the question?

THE WITNESS: Yes, it does.

JUDGE GOLDBERG: I would like to hear it.

THE WITNESS: All right. In the final one, for example---.

JUDGE GOLDBERG: Yes, that's what I want to know.

THE WITNESS: The question was asked in this way.

"As you noticed --" and what we had done here was to give them a ballot which listed all of these people in this particular survey, so that they had had a chance to study the

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Presidential and all the state-wide or the major state-wide offices, the Governor, Lt. Governor, Attorney General, the Congressional races.

"As you noticed, Dallas County voters will choose 15 members for the Texas House of Representatives this year. Some people think each member should be elected from his own individual district. Some think he should be elected by the whole county. In your opinion which is better, individual districts or county-wide?"

Q Mr. Robertson, from the surveys that you have made and in your opinion do the people that reside within the census tracts that make up the area of the alleged definable republican majority, do they share in a common life style and have the same socio-economic similarities?

A Oh, very definitely. Dallas County largely has been developed along very regular and rational lines from the point of view of land developers. The people in North Dallas, as we refer to it, which includes Richardson and Carrollton and so on, with certain exceptions that turn up as pockets here and there, basically, are those people in Dallas County who have the highest incomes. They are the

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people who have the best educations. You will find more college graduates per capita in this area than in any place else in the county. You find very, very few blacks, although there are some in this area. You find little or no labor union membership in this area. This is a class of people who are officials, managers, proprietors, business men. The home styles, the housing levels, the whole pattern is one basically of relative affluence. This is the affluent area of Dallas County, and as you move south from there, you move into certain, again, well-defined areas which are predominantly working people. Other areas that are preponderantly black people. This is the basic pattern of the way the county has been developed on a large scale basis, and people live in definite neighborhoods, so to speak, with a definite life style and community of interests. In that sense---.

MR. CROUCH: Pass the witness, Your Honor.

JUDGE GOLDBERG: Cross?

MR. RICHARDS: No questions.

JUDGE GOLDBERG: Mr. Luna?

(No omission here.)

Q Mr. Robertson, does affluency make any difference, then, in what you have referred to, then, as a life-style?

A Well, I think affluence makes a definite difference in a person's life-style, yes.

Q Now, with particular reference to the Richardson area, the people who live in the Richardson area, when did you take that poll?

A Which poll?

Q The last poll, the one you were reading from?

A The last poll I took in this area was completed, oh, about a month ago or so.

Q About a month ago?

A But the one we referred to here -- this was conducted -- this particular thing was in September I believe, of 1968.

Q Of 1968?

A But that was county-wide.

Q Now, isn't there a considerable difference in the affluency of that area this year as distinguished from 1968?

JUDGE GOLDBERG: What area?

Q This area that you have talked about

in the north Dallas Area -- that you have talked about being Republican.

A I don't know of any reason to draw that conclusion.

Q Well, let me ask you this; haven't we had in that area a huge layoff of highly qualified and highly educated people to the extent that there are a lot of them in that area in north Dallas right now who can't find a job because they are over-educated?

A There is some problem in that respect, Mr. Luna. Although, much of that exists, perhaps, more in your community than in the area that I am designating here. I think there is more concern about that in some areas of Garland than in this alleged Republican area. But, the survey data indicates there is less concern about that, as of this point of time, than there was, say, in November of 1970.

Q I see. All right, sir. Now, the people, you said, are as they act. Now, do you not recognize that we have at least Republicans and Democrats and independents in Dallas County?

A Yes. We asked them all the time.

Q So, then, didn't you find that in 1970 in both the primaries, the Republican and Democratic

primary, that out of 493,000 registered voters in the primary, we only had a total of approximately 146,000 voted in both primaries?

A I don't remember the exact figures. I do know it was something less than a third of the electorate.

Q Well, the Benson -- Yarborough race in the Democratic primary had -- would it be fair to say the largest number of votes of any race in the Democratic primary?

A I rather suspect that it did; I don't recall. The turnout in that race was approximately 25 percent of the electorate.

Q About 126,000 to be exact, wasn't it?

A That is in the ball park someplace.

Q And in the Republican primary in 1970, the vote, the total vote, was approximately 20,000, was it not, sir?

A I don't recall, Mr. Luna. But, the Republican primary was so ho-hum I don't know why anybody--

Q Yes. All right. But, you would say that 20,000 was approximately right for the Republican primary, wouldn't you? Does that sound about right?

A Yes, that sounds about right for that

particular year.

Q Now, then, in the general election in 1970, wasn't there, in fact, approximately 300,000 people who turned out to vote in the general election?

A Now, you are talking in figures that I am not accustomed to thinking in terms of.

Q Aren't they significant?

A I work in percentages and I will just have to look. The figures that I have here indicate that in the Senatorial race in 1970 -- no, that is for this area rather than for the whole county. In this area there were 137,000 roughly.

Q Just in that one area?

A In that area, that is correct.

Q So, you would agree that about 300,000 in that area is about right, approaching 300,000 for the whole County, wouldn't you?

A That would make about 60 percent, wouldn't it?

Q Yes, sir.

A Roughly, approximately, give or take a few percentage points. Yes.

Q So, then, we had substantially more than half of the population in Dallas County that didn't

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vote in any party primary, didn't we?

A Well, yes. That is always the case. In fact, it is growing more and more that way.

Q All right. So, then as a political analyst and political expert, wouldn't you say that the majority of the voters there for Dallas County, rather than being either Republican or Democratic, are Independent?

A That depends very much on what we mean when we say "independent", Mr. Luna. If by "Independent" you mean neutral, then the answer is no. Independent in Texas has a very definite political connotation, because of the development of Texas history. People have become independents in Texas, which once was a solid Democratic state, out of disgust with the Democratic Party -- and that means anti-Democrat, but not ready to be Republican.

Q Let's assume that Independent means that they don't belong to any political party. If that is what it means, then, wouldn't you agree with me that the majority of the people in Dallas County are Independents?

A This is possible. But I think the thing we are getting at here, there is no statement here

that people in this area are entitled to representative because they are Republicans. What is being said here is that the people in this area, no matter what they are, are entitled to elect Republicans if they wish to -- and they consistently have expressed the wish to do so.

Q Perhaps I misunderstood you, but I did understand you to say that the first Republican to run for the Legislature ran in 1958?

A No, I don't think I said the first Republican to run for the Legislature. I stated the first time the Republican Party -- and I realize this is open to debate -- but the first time the Republican party ran candidates for the Legislature.

Q The first time the Republican party ran candidates for --

A That is correct.

Q Is that what your research shows the way it happens in the Republican party, is that the party runs them, or that folks announce for the Republican party when they care to?

A This is the first time the Republican Party -- Well, look. Let's go back -- and I realize what you are referring to. I am well aware that in 1950 that because of the trauma of the Democratic primary in

which Hat Reed was elected and people felt it was over the confusion of W. O. Reed not being elected, he was retiring, that many of the people downtown became extremely upset. And, as a result, they talked with the Republican Party leaders, and Edward T. Dicker ran as a Republican and with the full support of the Downtown businessmen, and both newspapers and he was elected and he served one term and he resigned and didn't run again. In my mind he was not a candidate of the Republican party; this was a put on.

Q But he was nominated by the Republican party, was he not?

A He was nominated by the Republican convention for that purpose at that time, and he didn't come back again and we didn't hear any more from him until he became chairman of Republicans for Johnson movement in 1964.

Q Is that kind of like Curtis Graves being Chairman of the Democrats for Bush in 1970?

A I don't know anything about Mr. Graves' activity in that respect. It seems to me he has a continuity of political behavior, though.

Q Are you also aware that County-wide the Republicans elected, in a County-wide district,

Congressman Bruce Alger for a period of about 10 years, beginning about 1954.

A Yes. And, I am also aware that in 1954 and 1956 and 1958, he too, enjoyed an overwhelming support from both newspapers and the downtown establishments, if you want to call it that.

Q So, from a political analyst standpoint, would it be fair to say that whatever the method of seeking office, whether it is by single district, or otherwise, one needs to have the support of an organization to help him to be most successful?

A Well, one always needs the support of an organization; the question is, how much. And, the bigger the area, the more money you have to have, and therefore, the more dependent you are and you can also exercise your own judgement.

Q You don't deny that Congressman Bruce Alger behaves like a Republican, do you?

A There is a value judgement that is being expressed in that, that I don't want to comment on one way or the other.

Q Well --

A As far as I understand, Mr. Alger behaves in his own way and the political circumstances

developed as they did.

Q Well, you told us that Mr. Dicker -- you didn't consider as being a Republican, do you?

A I didn't say that. I don't consider that Mr. Dicker was really run by the Republican -- the Republican party wasn't visible at that time. If you remember, Democrats used to go before the Republican County Convention and ask for their endorsement.

Q Who hired you to make this poll?

A To make which poll?

Q The poll you just -- that you just told the Court about?

A The ones to which I have referred, one was conducted for the Republican executive committee, one was conducted for Senator Mike McCool and one was conducted for Senator Mauzy. But, I have done polls for a lot of people, as you know.

Q Are you also aware of a Republican who was elected County Court at Law Judge, County-wide, being the Honorable Grover Hart?

A Yes, I am.

Cross- Robertson 885

Q Do you know when that was?

A As I recall, that was in 1952. That was the year all the Democrats cross-filed and everybody on the Republican Ballot -- What happened in Dallas County when the Democrats for Eisenhauer movement headed up by Governor Shivers, and all the favorite State officials who were then in office, -- In fact, there were only, as I recall, three local Democrats who were not in the Republican column, two of whom refused, Judge Sara Hughes and Barefoot Sanders, and there was the Judge who could not cross-file, because Grover Hoart had already filed, and the people voted for that Republican slate en mass. I don't think they ever knew they elected Hoart.

Q You were not aware, then, that the Dallas Bar Association in a poll endorsed, among the judicial candidates, Grover Hoart?

A I am not at all surprised. I think he would have deserved it.

Q So, then isn't what you are saying --

A I am saying this is an unusual situation, you realize?

Q What you are saying, in your opinion he was a better qualified candidate for that office than his opponent?

I don't think the electorate never knew whether he was or not.

Q I am asking you what you knew?

A I don't -- didn't know his opponent.

Q Well, I understood you to say you thought he deserved it and I was trying to find out the basis.

A I think he is a well-qualified man. I don't see why they shouldn't endorse him.

Q Mr. John Bryant, was he also elected Judge of the County Court at Law in a county-wide election?

A In 1962, he was.

Q In 1962?

A Yes.

Q That was 10 years after Grover Hoert. Now, was Mr. Grover Hoert elected again after his first term?

A I believe he was elected to a second term, but they cross-filed again that year, too.

Q Now, he never was cross-filed on the Democratic ticket, was he?

A The Democrats cross-filed under Eisenhower.

Q I am talking about Grover Hoert.

A He didn't file as a Democrat, no.

Q And, so, if somebody else cross-filed, it didn't have anything to do with Grover Heart, did it? I didn't hear your answer.

A I lost the essence of your question.

Q My question was, you have mentioned cross-filing that year. My question was: did cross-filing have any application in Heart's race?

A Well, in my judgement -- In the first instance, it elected him. From my memory at this point in time, I cannot say whether Grover Heart had opposition the second time he ran. I don't recall the circumstances surrounding his second election.

MR. LUNA: Thank you, sir.

JUDGE GOLDBERG: Anybody else?

MR. MCDANIEL: No questions, your Honor.

MR. CROUCH: That is all we have, Your Honor. We would like to call Representative Fred Agnich.

FRED AGNICH,

a witness called by Mr. Crouch, after having been first duly cautioned and sworn to testify the truth, the whole

truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Crouch:

Q Representative Agnich, would you state your name and tell the Court where you reside?

A Fred Agnich, 6033 Melody Lane, Dallas.

Q Are you now serving as a member of the Texas Legislature?

A I am.

Q When were you elected?

A In November of 1970.

Q And you are serving as a Republican member of the legislature from Dallas County, is that correct?

A I am.

Q Prior to your having become a candidate to the legislature, in 1970, Mr. Agnich, would you describe briefly your background in Dallas County and tell the Court how long you have been a resident of Dallas, about the civic involvement, how you have been involved in civic affairs.

A Well, I have been a resident of Dallas

and worked out of it since 1937, and I was engaged in the building of what has now become a great corporation, Texas Instrument. And, in the course of that, I became involved, of course, in civic endeavors. I was vice-chairman of the Aviation Committee for the Dallas Chamber of Commerce when we built the present Love Field terminal. Then, I have worked, I guess since then, in approximately I suppose, a hundred charitable drives of all kinds, being on the board or raising money. I was a member of the Board of Governors and Chairman of the Board of Governors of Green Hills School for a period of eight years, when we built the modern campus there. I guess I have been involved in almost every political activity you can think of. I was one of the leaders in the fight for the crossroad bond program for the City of Dallas.

Q Have you also been active in the Dallas Petroleum Club?

A Yes.

Q And served as an officer of that club?

A I am currently a director of that club.

Q Mr. Agnich, have you also during this period of time been involved in politics or had some appearance in politics prior to your becoming a candidate?

A Yes, sir. I first became involved in politics in the first Nixon campaign when I was Chairman for a fund-raising dinner for Mr. Nixon. Subsequently, I became involved in particularly the finance end of the Republican party in Dallas County. I was, for instance, Chairman for John Tower in Dallas County. I was Dallas County Goldwater Chairman in 1964. I was Dallas County Republican Chairman for about two and a half years. I am currently a member of the State Republican Executive Committee, as District Committeeman, from the 8th Senatorial District. I could hardly name all the political activities I have been engaged in.

Q Is it safe to say that during your many civic and political activities that you have had considerable exposure to the community and have been on television on several occasions and are well-known through the committee and the community leaders?

A I think you can make that statement, yes, sir.

Q Mr. Agnich, when you became a candidate for the Legislature in 1970, do you recall how much you spent -- or let me -- strike that question. And let me get into another line of questioning first. Prior to becoming a candidate to the Legislature, you were also

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the County Chairman for the Republican party in Dallas County?

A Yes.

Q Did you have occasion during that time to -- were you involved in the recruitment of candidates for the Republican Party?

A I most certainly was. This consumed a large part of my time, in trying to find a good candidate whom I felt and the party felt could be elected and who, if elected, would do a good job as an elected public official.

Q Did you specifically become involved in the recruitment of candidates for the State Legislature of Dallas County?

A Yes. This was one of my more difficult tasks.

Q And, did you find that County-wide districts -- a multi-member county-wide district -- was an asset to you in recruiting candidates and getting people to run for office?

A No. On the contrary, it was a great handicap, and if I might interject here, prior to the 1970 filing date, I made a great effort to put together if you will, a slate of candidates for the State

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Legislature who would -- I wanted to get men who were well known in the community who were men of substance, who had been successful in whatever endeavors they had engaged in, because I wanted to try to show the people that we indeed had a group of responsible men, and I simply couldn't get anywhere, because the task was simply not worth it. The magnitude of the task was not commensurate with the magnitude of the position.

D. B. - Agnish 813

Q Would you say that in your opinion it was easier to recruit candidates for the State Senate and candidates for the State Congress than it was to recruit candidates for the state legislature?

A Oh, definitely, yes it was.

Q Was the biggest deterrent the tremendous sums of money that would be required to run for the state legislature?

A It most certainly was.

Q And the extensive use of television was the basis for that cost?

A Yes.

Q Mr. Agnish, after you became a candidate for the legislature in 1970, were you a part of or were you aware of the study that was made on behalf of the twelve Republican candidates for the state legislature by the firm Van, Chronkite and Malloy?

A I was aware of it, yes.

Q Would you briefly tell the Court the purpose of that study and what it involved?

A Well, the purpose of the study was designed to find out whether or not the Republicans could field a slate of candidates for the state legislature that could win against against the corresponding

D. E. - Agnish 814

or the opposing slate fielded by the Democrats. We wanted to know if this could be done, and if so, what kind of a campaign would have to be run and how much would it cost.

Q Now, is it safe to say that the firm of Van, Cronkite and Malloy had, prior to that time, been used exclusively by the Democratic Party?

A I don't know of any other case before that where they had worked for the Republican Party or a Republican candidate. They may have, but I don't know about it.

Q Now, you are familiar, are you not, that the firm was involved with the "Fifteen for Dallas" campaign for the Democratic legislative candidates in preceeding years?

A Yes. And since the "Fifteen for Dallas" had won in preceeding years, it was obvious that it would be best to go to the people who had advised them in that race.

Q Did you recall what the proposed budget or the budget proposals that were submitted by that firm were as a result of that study?

A Yes. I recall generally what the substance of the report was. It was "Yes, you could win",

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given a lot of circumstances, but in order to do that, the optimum budget required, as I remember it, was something in excess of $220,000.00 and the absolute minimum would be, if I recall, $162,000.00. But that in addition to that, it would be expected that each candidate-- and I was to be one-- would be expected to raise money for his own race and I believe that those figures did not cover any additional costs in the way of staff personnel or materials that the party, itself, might have to have in conducting such a campaign.

Q Mr. Agnish, how much did you personally spend on your campaign for the legislature in 1970?

A As I recall the figure, right at $31,000.00. It could be a few dollars more or less, but I think that is within a hundred or two of what it cost.

Q Would you consider that you were a typical candidate or let me put it another way, do you think that a candidate that had not had your background of involvement in community affairs and in political activities and had the name identification that you had at the time that you became a candidate could run an effective campaign for that same price?

A I doubt that he would have been successful

because the circumstances were unusual and you want to remember that my friends don't exactly call me a landslide, because of the 247,000 votes cast in that race, I won by only 730.

Q Mr. Agnish, did you also, during the course of that race, have the endorsement of the famous committee that has been the subject of so much testimony, the DCRG, the Democratic Committee for Responsible Government?

A Yes. I had their endorsement, which I welcomed.

Q Did you have the endorsement of both newspapers?

A I had the endorsement of both major newspapers, the Oak Cliff Tribune and several other papers around the town.

Q Did you have the endorsement of Mr. Joe Rich, one of the former Democratic County Chairmen?

A A very discerning Democrat, he did endorse me.

Q Mr. Agnish, you think you could have won in 1970 or been elected in 1970 had you not had the endorsement of the DCRG?

A I think it would have been very difficult

for me to have won that race in view of the narrow margin. I would have to speculate as to how much that amounted to, but certainly it was a significant factor in my election.

Q Mr. Agnish, in serving in the legislature, once you were elected to the legislature, have you had any difficulty in representing adequately, to your mind, a population of 1,300,000 people?

A Well, I personally feel that I was inadequate in-- because I feel that if you are going to represent your constituency well, you must communicate with them. You must have a closeness of communication both ways. In view of the staff that we had--

Q --What was that staff?

A Pardon?

Q Excuse me for interrupting, but what kind of staff?

A Well, we are allowed a full-time person and then what we call a half-- part-timer. But that was grossly inadequate, in view of the thousands of letters received, that I had to hire additonal staff people on my own personal expense to attempt to handle the letters. But there just wasn't any way to really do it.

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Q You hired out of your own and paid for out of your own pocket the additional secretarial staff? Is that correct?

A Yes. Not only my own secretarial, but legal aid and some additional office space. The Democrats for some reason, didn't give me the most spacious office in the Capitol, and I had to go outside to hire better quarters.

Q Do you think this additional expenditure was necessary to do your job adequately?

A Yes, it was. May I interject something here? You see, being the only Republican, all Republicans in Dallas County felt that I was their chosen representative, and so they never communicated with any of the other representatives and in addition to that, because of my other previous civic activities, I was contacted I guess by every municipality and governing board, school districts and everyone else for my help in whatever problem might be.

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Q Mr. Agnish, in serving in the legislature, have you noticed any difference in responding to constituents' needs regarding whether they lived in a home rule city or not?

A No, I did not.

Q That has not been a factor in whether you have been effective or not?

A I don't believe so, because I cannot think of a single day that went by while we were in session in which I did not receive at lease several letters, one telephone call or personal visit by some official of one of the various municipalities, whether they were home rule or not.

Q Would you characterize all of the problems you were called upon to deal with in the legislature, "statewide problems", as opposed to local problems?

A No. There certainly were a great many local problems as well as statewide.

Q Mr. Agnish, I am asking Mr. Bass to hand you what has been marked as DR Exhibit 9.

A All right.

Q Are you familiar with that map?

A Well, I am familiar with one very much

like it. Let me see and make sure it is the same one. I have not seen this before, but I was given one like that except it was my race and this is Representative Dick Reed. I am familiar with the coloring system.

Q That map was prepared by the County Clerk's Office? Is that correct?

A It is correct.

Q In Dallas?

A Yes.

Q And it was prepared for the purpose of assisting you in determining or in reapportioning the legislature, senatorial, congressional and state representatives, I presume?

A I have no idea why it was given to me, Mr. Crouch. I accepted it gratefully because it contains very valuable information.

Q It does show the per cent of Democrat and Republican by precincts? Is that correct?

A It does. I think generally the brown areas, the dark brown represent those areas of-- where Representative Reed in the precinct got eighty per cent or more of the vote, and the green, sixty to eighty, and the blue, forty to sixty and the orange, twenty to forty and the white would be less than twenty.

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Q And the orange, if it indicated twenty to forty per cent Democratic, would probably mean sixty to eighty per cent Republican? Is that right?

A Yes. I think so.

MR. COUCH: That's all. We pass the witness, Your Honor.

JUDGE GOLDBERG: Cross examination?

CROSS EXAMINATION

Questions by Mr. Luna:

Q Mr. Agnish, these-- the map that you just talked about, those maps were prepared to show what the vote was in a particular race, rather than--

A --That's right. As I understand it, there was a separate map made for each of the members of the House. I didn't know before that there were. I know I got mine and I assume the others did.

Q And therefore, of course the percentage, Democrat and Republican, is not the same on hardly any other maps, is it?

A Well, there would be some difference, yes.

Q Yes. Mr. Agnish, there is not much question in your mind but what you can get elected in Dallas County to the legislature, countywide, any year

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you are ready to run, is there?

A Well, thank you, Mr. Luna. I appreciate that--

Q --That is a question and not a statement--

A --vote of confidence. But I would hope that would be so, but I don't know.

Q All right. Now, if you feel that is so, Mr. Agnish, you have told us how you worked in the civic drives in other areas of the community and got yourself known.

A That's right.

Q If other Republicans would do the same thing and if there is one-- they are as well-qualified as you, is there any reason that other Republicans couldn't also be elected, as somewhere in 1962?

A Yes. I think there is always a possibility that one could be elected, because I was. I do want to point out to you, though, that if a requirement for election to the office of state representative means you first spend twenty years in intensive public civic endeavoring work, you are putting some pretty serious qualifications upon that job.

Q Well, there are a lot of people in the legislature from Dallas County who have not done that,

aren't there, Mr. Agnish?

A They are not Republicans.

Q Were there any elected in 1962 who had worked twenty years in civic activities?

A I don't know. I don't believe so.

Q So then is it your feeling that it is any more difficult for a Republican to become known in Dallas County than it is a Democrat or do they have the same problem in becoming known?

A No. I think that whether you are a Republican or a Democrat, if you are talking of areas outside of political areas, there is no difference. I think the political area, there might well be a difference. I suspect it would be easier for a Democrat because of the relation concept and the type of financial backing and race and the voting for the slate, you see, does not require that there be name identification.

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BY MR. LUNA:

Q Mr. Agnich, based on your experience as Republican County Chairman, would it be fair to say that there are more people in Dallas County who -- more qualified voters in Dallas County who don't participate in either party than participate in both of them combined?

A Well, I would say that is somewhere -- I am not sure of the exact figures, but you would be close, yes, I think that is right.

Q So then, would it follow it is fair to say that the voters in Dallas County, rather than being either Republican or Democratic are predominantly independents?

A Well, there is a great independent element in the county, but I think that there are far more so-called -- I suppose you would call them consistent Democrats than they are consistent Republicans, or there are more of them, because more vote in the Democratic Primary, although I recognize there are other factors involved there.

Q Mr. Agnich, did you author any legislation in -- well, you have been there one session?

A That's right.

Q Did you author any legislation while you were there?

A Yes, one piece which I co-authored with

Representative Tom Christian, but in another case in which I resurrected a bill that came from the Senate, Senator Rennard, and I rewrote it. The original bill was this big (indicating), and I completely re-did it. It was about 20 pages long. It was easier to carry it under his name. It passed both Houses without a dissenting vote.

Q So then, although it was a predominantly Republican Legislature -- pardon me -- predominantly Democratic Legislature---.

A Right.

Q ---you were able to get your bills passed, the only two you authored?

A No, no, no. You didn't say passed. You said authored.

Q My question was authored. Did they not pass?

A The first one did not. No, sir, that was killed in Committee. It got in Bill Heatly's committee. (LAUGHTER)

Q So you authored two bills. One of them passed, the other one didn't?

A That's right.

Q Not a bad batting average, is it?

A No, it is not. As a matter of fact, I will say that the Democratic members of the House universally

treated me very well, indeed. I have no complaint.

MR. LUNA: Thank you very much.

JUDGE GUINN: Further examination?

REDIRECT EXAMINATION

BY MR. [illegible]:

Q Mr. Agnich, you asked about the independents voting.

Is it not true in your experience as County Chairman that we have had at Republican Headquarters a lot of volunteers or canvassers who did not vote in either party primary?

A That's right.

Q But still worked for the Republican candidates in the fall and November.

Do you consider those Republicans?

A I do.

Q Also in asking about the optimum and minimum budget that was suggested by Van, Krumbite and Malloy, I failed to ask you, do you know whether that sum was spent, $227,000.00 or $160,000.00 was spent on behalf of the slate?

A No, as a matter of fact, it frightened everyone so badly, we completely abandoned that proposed course of action. There was just no way we could raise that kind of money.

MR. CROUCH: I have no further questions.

JUDGE GOLDBERG: Any questions, Mr. Curry?

MR. CURRY: No questions, Your Honor.

JUDGE GOLDBERG: Mr. McDaniel?

MR. McDANIEL: No, sir, I have no questions.

EXAMINATION

BY JUDGE GOLDBERG:

Q Mr. Agnich, I would like to ask a question or two, if I may.

Did you appear before the Legislative Redistricting Board?

A I did.

Q Tell us about your experience.

A I appeared before the Board in my capacity as a member of the State Republican Executive Committee. I represented the Republican Party of Texas. I did present to that Board a single district plan for all of the 150

districts within Texas, and detailed maps are given of each of the large metropolitan areas, including the whole state, and the population differential was extremely low. They work very close, and in no case did we violate the State Constitution with respect to county lines, and as nearly as possible, all of the districts were compact and contiguous, and we tried to take into account ethnic and other relationships, communities, if you will.

Q Did you also present a plan for senatorial districts?

A No, I did not.

Q Just for the house?

A Because that was the area I was familiar with.

Q One more question.

A Yes, sir.

Q You believe, of course, as you have said, in single member districting?

A I do.

Q Would you enumerate for the record the elements which you think should go into the determination of what should constitute a legislative district?

A Yes. I think, of course, the first thing we have to do under the one man-one vote rule---.

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Q Yes.

A ---that we understand the district must be as nearly---.

Q Numerically equal?

A ---numerically equal as possible.

I think secondly that those districts should be, where possible, compact and contiguous. In other words, we don't want the reptilian aspect, if we can avoid it. They should represent, as well as possible, a like community of interests, whether that be ethnic, whether it be social or whether it be economic.

I might, if I may, I drew up a plan for Dallas County with 15 individual districts. Representative Dick Reed drew up a plan of 15 individual districts. Representative Ian Holmes drew up a plan of 15 individual districts. This was not done in collaboration, and these were entirely independent, and when we compared them, there was strikingly little difference, and any one of the three of us would have accepted the plans of the other. There was no attempt to gerrymander, and we found that Dallas County, the various cities, it was very easy to draw districts which would incorporate, say, Garland or Grand Prairie, Irving or Carrollton, Farmers Branch.

JUDGE GOLDBERG: Thank you.

THE WITNESS: I think these are the things I believe in.

JUDGE GOLDBERG: Any further questions? You may step down.

(WITNESS STANDS ASIDE.)

JUDGE GOLDBERG: Let's take a ten-minute recess.

(REPORTER'S NOTE: The Court then, at 3:42 o'clock, P.M., January 5, 1972, recessed until 3:52 o'clock, P.M., the same date, at which time it reconvened.)

JUDGE JUSTICE: Please be seated.

JUDGE GOLDBERG: It may be a poor time to say this, but we are deeply greatful for the cooperation that we have received up to date, and our honest prayer is that it will continue, so we can end it very soon. Proceed, now.

MR. CROUCH: I would like to call the next witness, Mr. John Knapp, K-n-a-p-p-s.

JOHN KNAGGS, 831

a witness called by Republican Intervenors, having first been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CROUCH:

Q Mr. Knaggs, would you state your name and where you reside?

A John Knaggs. I reside at 3703 Hillbrook in Austin.

Q What is your business or profession?

A I own a public relations firm that specializes in political campaigns for Republican candidates.

Q What is your educational background and experience?

A I have a Journalism Degree from the University of Texas here in Austin. I worked on three newspapers before becoming United Press International correspondent in the State Capitol Bureau where I covered the Legislature in various political campaigns. From there I

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became Public Relations Director for the Republican Party of Texas. That was in 1963, four years there working as a political consultant on various campaigns state-wide, congressional, legislative, and from there into private public relations business to the present.

Q In 1966 did you have occasion to work on Senator Towers' state-wide campaign?

A Yes, I did.

Q And as a result of that experience traveled all over the state?

A Yes, I did.

Q And since you had your own firm, Mr. Knaggs, have you been retained by the Republican Party to work with legislative candidates in 1970 and 1972?

A Yes.

Q Would you state the nature of that retainer and exactly what you have been employed to do?

A Well, our firm helps the local Republican organizations try to find qualified candidates to run for the Legislature and to advise them on the nature of the campaign they need to conduct, including media costs, organization, and so forth.

Q Did you do this, serve in this capacity in the 1970 campaign?

A Yes, I did.

Q As a result, had the responsibility of coordinating campaigns which involved single member districts and some multimember districts, some urban and some rural?

A Yes, all types.

Q Now, did this also involve the question of budgeting and advertising expenditures, placing television spots and producing television spots, et cetera?

A Yes.

Q For these candidates?

A Right.

Q Now, have you as a result of this experience done a study, or do you keep abreast of the campaign costs, for example, for Dallas County?

A Yes.

Q Have you recently prepared or done some work in preparing budgets for some proposed costs for the campaign in 1972 in Dallas County for candidates for the Legislature?

A Yes, we periodically update media costs, which are changing, and I do have current figures for Dallas County, yes.

Q What in your opinion would it cost to run a

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successful campaign for the Legislature in Dallas County?

A As one candidate?

Q Yes, as one candidate running for the Legislature.

A Well, I don't want to belabor this point.

Q Let me clarify that -- for the general election.

A For the general election, right, and I don't want to duplicate some of this previous testimony. I know that time is a factor.

The figure I have is based on prototype rather than individual candidates, and some things could change, depending on how well he appeared on television and so forth. But the figures that I have contemplate a general budget using the normal media and paraphernalia involved in the campaign totaled out to $87,390.00.

Q In your opinion is television and radio and necessity to reach the Dallas market for a candidate on a multimember county-wide district?

A I would say probably television might be considered essential. I am not sure about radio.

Q Is the cost of television in Dallas greater than in other areas of the state?

A Proportionately for a legislative race it is.

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I know costs have been discussed a lot in this case, but few people realize how fast these costs can escalate, as relates to a legislative race, because the media costs are predicated on the approximate number of viewers that that station can determine, and in the case of Dallas you pay an abnormally high cost, because you are paying for viewership far beyond Dallas County only. You are paying for Tarrant County and a great viewing audience beyond Dallas, so your cost there is disproportionately high for the amount of people you reach.

Q In other words, you are having to pay for the cost of reaching viewers in Fort Worth and in Denton and surrounding areas?

A That is correct, and, of course, this occurs all over the state to some extent, but Dallas, I would say, has a cost that is probably disproportionately high compared to other districts.

Q Have you also done some work, Mr. Knaggs, preparing budgets for prospective legislative candidates in Harris County who in 1972 will run in single member districts?

A I have discussed single member district with one candidate in Harris County.

Q In your judgment is a race in a single

member district in Harris County -- is television a necessity---?

A No.

Q ---as far as campaign expenditure?

A No, assuming you have a candidate who is energetic who really wants to win and is willing to work and can engender support among friends and associates in the area in which he lives, I don't think television is necessary to his success.

Q Now, Mr. Luna alluded with one of our prior witnesses, I think, to -- I think he said if you had all 18 candidates running in one ad, you could run it cheaper in the Dallas News than if they ran 18 individual ads. If we had individual legislative districts in Dallas County, would in your opinion television be necessary and advertising in the Dallas Morning News and the Dallas Times Herald and the widely-distributed media necessary?

A Well, there are 17 weekly newspapers in Dallas County. If you don't use all those, you are pretty well forced to go into the dailies there, I think. There are three small dailies and then the Dallas Morning News and the Dallas Times Herald.

In my opinion, if I were to recommend a realistic budget in the present system, I think it would

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be necessary -- I think it would be desirable to use the News and the Herald, as opposed to using all the other newspapers.

Now, again, you run into the problem here of paying for more than you need, because the average cost for the State of Texas in weekly newspaper per column inch is $1.12, according to the Texas Press Association. The Dallas Morning News and the Dallas Times Herald's rates now are beyond $11.00 per column inch. Again, they have to predicate those rates, and rightly so, on their readership, which, particularly in the case of the Dallas Morning News, is far beyond Dallas County.

Q Do you know of any reason to differentiate between Dallas and Harris County, as far as single member or multimember districts are concerned, Mr. Knaggs?

A Do I?

Q Yes.

A No.

Q Mr. Knaggs, now, you have testified concerning the campaign costs. Am I correct in assuming -- or maybe I should ask you, do you have anything to do with filing the reports filed by the candidates in compliance with the state election laws?

A No, I don't directly.

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he would also be faced with the same expense differential between the single and the multimember district?

A Well, some kind of percentage, yes. Of course, your media costs are not as high in Bexar County as they are in Dallas, but, certainly the scale would apply.

(No omission here.)

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Q So, the figures you have been talking about are purely from public relations and advertising standpoint, and you are not familiar with the costs used by candidates when they file their reports in compliance with the Election Code. Is that correct?

A That's correct.

MR. CROUCH: Pass the witness.

MR. EASON: Nathan Eason from San Antonio.

CROSS-EXAMINATION

BY MR. EASON:

Q Mr. Knaggs, you have just stated that the cost of conducting a single member district campaign in Dallas County would be less than conducting a multimember district campaign for the State Legislature. Is this correct?

A Yes, sir.

Q Do you know of any reason why it would be any different in San Antonio in Bexar County?

A No, I don't believe so.

Q In other words, it would still be more expensive for a candidate seeking office in Bexar County,

CROSS EXAMINATION

Questions by Mr. Eason:

Q But, to some degree it would be detrimental to the person from a cost figure to run in a multi-member district election for the state legislature in Bexar County, as opposed to a single-member district in Bexar County, is that correct?

A Costwise there is no question about it in my mind.

Q You further stated a moment ago that you knew of no reason why Harris County should have single-member districts and Dallas County have multi-member districts, is this correct?

A No criteria that-- I mean, I don't know. No, I don't know.

Q Well, can you think of any practical reason, or any reason, why Harris County should have single member districts and Bexar County have multi-member districts?

A No.

Q The same answer would apply then, in both geographical situations-- or both metropolitan areas?

A Yes.

Q Were are you from originally, Mr. Knaggs?

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A Cotulla, LaSalle County.

Q That is the county seat of LaSalle?

A Yes.

Q And, that would be the-- In the new proposed 21 senatorial district, is that correct?

A I believe that is correct.

Q Are you familiar with Senate District 21 as passed by the Senatorial Redistricting Board on October 15, 1971?

A I believe, if that is the district you refer to, it goes into northern Bexar County. Then I am familiar with the configuration of the district, yes.

Q All right, sir. How would you define "community of interest"?

A I would say similar to what it has been defined in previous testimony, economic interest, social, ethnic and those considerations.

Q All right. How long did you live in LaSalle County?

A I resided there seventeen years.

Q Do you feel that you are reasonably familiar with the test that you put to socioeconomic interest of the people in southwest Texas?

A Yes, sir.

Q All right. From the guidelines that you have laid down, or the criteria for community of interest, would you say that there is a community of interest between Zapata, Jim Hogg, Duval and Starr counties and the area of Alamo Heights and Terrell Hills in San Antonio?

A Well, certainly not on, of course, on an urban-- rural basis. And, on the other basis probably not.

Q Would you say that this district meets the criteria of compactness and contiguity?

A I can't remember whether it is contiguous or not.

Q Is it-- Assume it is contiguous.

A I thought it was. Compact, no, I wouldn't think so.

MR. EASON: Thank you, sir.

CROSS EXAMINATION

Questions by Mr. Luna:

Q Have you ever handled a campaign in Dallas County for the legislature?

A For State Senate only, not the House.

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Q Not the legislature?

A No, sir.

JUDGE JUSTICE: Speak up, please.

A For the Senate we were involved with Ike Harris when he was first elected to the State Senate, but not directly for the House of Representatives.

Q Now, of the amounts of money that you talked about, or the total amount that you talked about that it would cost in Dallas County to run for the legislature, I understood you to give a figure of $87,300.00. Is that right?

A Just a moment. $87,390.00, that is correct.

Q Did it cost any more to run in '72 than it cost to run in '70?

A Well, these figures I have are the current figures. These reflect current costs.

Q Effective for 1970?

A These reflect the most recent rating increases that the media-- buyer in Dallas advertising agency was familiar with, so I assume they are.

Q Mr. Kneggs, there has never been anybody in the history of Dallas County that ever spent $87,380.00 running for the legislature that you know of, has there?

A That I know of?

Q Yes.

A No, I couldn't say that.

Q As a matter of fact, you heard Mr. Agnich say that in the last election he spent $31,000.00 plus; did you hear him say that a little earlier?

A Yes, I did.

Q And, are you aware that in 1970-- Well, first of all, in deciding what one spends in running for the legislature, doesn't it depend to some extent on what one's opponent spends?

A Let me answer it this way. I think in Dallas County you are faced again with a peculiar problem. It is so large that you have to have name identification to win on a Republican ticket, and I am speaking now as if I were recommending this budget to a Republican candidate. Now, regardless of how weak his opponent, my view individually is if he is not known by the majority of those voters he is not going to win, as a practical matter. And, this is why this budget is-- reflects what it takes according to a media buyer in Dallas County under present costs to get that name known.

Q All right. I want to hand you the

Defendants' Exhibit Number 10 and ask you to look at it, if you will, please, sir, and tell us whether or not your figures indicate that Ban Holmes should have been elected in 1970 against a Republican opponent, having spent the sum of $210.00, as that exhibit shows?

A I think that some of the previous testimony-- Again, I am going to repeat some of the things that have been said here, but there is a distinct difference in running on the Republican-- as a Republican nominee in Dallas County than there is under a Democratic nominee under the present system-- that is what I based the assumption on. The fact that Mr. Holmes or others win, in my opinion, is the same as others have said; because they have the benefit of that party vote they get on the Democratic ticket.

Q I am sorry. Maybe--

A This budget is recommended for a Republican. I didn't say Mr. Holmes or any Democrat would have to spend this amount of money.

Q All right, sir. I am sorry, Mr. Kneggs, I didn't intend to be arguing with you but I misunderstood you. I thought you said that anybody, to get elected to the legislature, would need to spend that kind of money in Dallas County. But, what you were saying was

that a Republican in Dallas County would expect to spend that much money.

A If I didn't say that I am sorry, because I meant to qualify--

Q Maybe you did.

A My work is strictly Republican.

Q That is what you intended to say?

A Yes, sir.

Q And, wouldn't it be reasonable to say that the political climate, being what it is in Texas, that there are many single-member legislative districts in Texas that a Republican cannot get elected in regardless of how much money he spends?

A I think that is probably right.

MR. LIMA: Thank you, sir.

JUDGE GOLDBERG: Any further questions?

MR. CROUCH: Yes, I have just one more question, Your Honor.

CROSS EXAMINATION

Questions by Mr. Crouch:

Q When you said that-- let's see if I can rephrase it this way. When you said that the Democrats would have the benefit of the Democratic slate, I assume

you were referring to the previous testimony that they would have the benefit of a coalition, which is sometimes referred to as DCRC and that they would have the benefit of somebody else spending the money for them, is that correct?

A I am not as familiar with that committee as others here, but my own observation in participating and studying these election results is that the Democratic slate has a very, very strong edge going into the November election. And, it seems to be that that vote occurs very heavily there and it is not dependent upon the name identification which seems to be what is required for a Republican to win.

Q Do you recall what the filing fee was for a candidate for the state legislature, Mr. Kneggs?

A I am sorry, I don't.

MR. CROUCH: Fine. I pass the witness.

JUDGE GOLDBERG: Any further questions? Does that end the Republicans' case?

MR. CROUCH: Your Honor, we had one other witness, Mr. Bill Bass, which is a prospective candidate. I think the parties have stipulated that he would testify as alleged in his petition, and I will save the

Court's time and not put him on. I would say that he is a prospective candidate and would like to run for the State Legislature and claims the discrimination that is suffered upon him because he is a resident of Dallas County and had he been a resident similarly situated in Harris County he would have had an opportunity to be a candidate for the legislature. 848

Now, in addition we submitted to the Court, and I have had marked as an exhibit, I think it is DR Exhibit Number 9, which is a proposed plan for reapportionment for Dallas County. And, I would assume now is not the appropriate time to discuss it, but we will have somebody available to discuss at the appropriate time, otherwise that concludes our presentation.

MR. EASON: I think I am going to call one witness, Your Honor, because I have been able to dispense with a number of my witnesses by fortunately being able to, I hope, show my position in regards to certain elements of the action by the witnesses of the other parties. At this time I would like to call Mr. Van Archer.

VAN ARCHER,

a witness called by the Plaintiffs, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Eason:

Q State your name, please, sir.

A Van Archer.

Q What is your position with the Republican Party in Bexar County?

A I am Chairman of the Republican Party of Bexar County.

Q And, how long have you been so acting?

A Since 1970.

Q And, prior to that time did you have any experience with the Republican Party or with working in politics?

A Well, I guess I started back, say, around Goldwater time as block captain.

Q When you say "around the Goldwater time", what do you mean, specifically?

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A 1964.

Q All right. And, since 1964 until the present time have you been fairly active in your political work with the Republican Party?

A Yes, sir. Afterward I worked in the fund raising part of it.

Q Would you say that most of your activities with the party have been with the fund raising part up until the time you were elected county chairman?

A Yes, sir, up until that time.

Q Where do you live, Mr. Archer?

A At 218 West Linnwood in San Antonio.

Q Where is that in San Antonio?

A Well, it is over there pretty near Trinity University.

Q All right, sir. Have you lived in San Antonio all your life?

A Yes.

Q Now, Mr. Archer, I will ask you to help me on this-- to look at our exhibit that has been designated as SAR and the various numbers, SAR-1, please.

JUDGE JUSTICE: What is your business or occupation?

A I am in the parking lot business in San

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Antonio and also I build houses with my brother.

21st going to take in now besides Bexar?

A Well, sir, I don't know all of the counties, but it is something on the order of, I believe-- I don't know what all of the counties are.

JUDGE GOLDBERG: I see.

Q But it does take in the lower southern portion of the county and that is and what was then Senator Connally's district? Is that correct?

A Yes, sir.

Q All right. The next exhibit which is numbered SAR-2, would you please tell--

A --Well, all these maps do is just show the pattern of voting and this state map here shows the governor's race of 1966 between John Connally and T. E. Kinnerly and it marks out the brand new senatorial lines in this 21st district and then in yellow ink I put in the percentage that the Republicans got in those counties. And I think it goes all of the way down to six per cent in one county.

Q But in any event, in the gubernatorial race in 1966, it would then show the now present 21st senatorial district with the vote in the gubernatorial election for that year for the entire district, together with the per cent?

A Yes, sir.

Q All right. Could we have SAR-5, please?

A The percentages are written in, but I can't read them there. And also on this map it shows that each county making up this new 21st district shows a Democrat majority of seventy per cent or more.

Q Yes, sir. Mr. Archer, I am calling your attention to SAR-4. Would you tell us what this map depicts?

A This is a map-- city map showing the 1968 governor's race between Eggers and Smith and the yellow painted in precincts are precincts that Paul Eggers received fifty per cent or more or fifty-one per cent or more.

Q In the areas shaded yellow?

A Yellow, yes, sir. With the new senatorial lines drawn in.

Q Now, as I understand the map, and you correct me if this is wrong-- in this red line here, where you have written "21st district proposed" that is the one that has been passed by the Board? Is that correct?

A Yes, sir. That is correct.

Q And this was all what per cent? Over

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fifty per cent?

A Yes, sir. Close to sixty or sixty-five per cent. I wrote in the percentage of the Republican vote in each one of those precincts.

Q All right, sir. I will ask you if you will, if you would step down here a moment, please?

JUDGE WOOD: You will have to speak up, because he won't have the benefit of a speaker down there.

Q All right. Speak up. Now we are referring to the Smith-Eggers race in 1968. Is that correct?

A Yes, sir.

Q I would appreciate it if you would just take say the bottom ten precincts in this area that is now being put in the district.

A Starting right here from Burr Road in San Antonio north, Alamo Heights and Terrell Hills, I will just read off the percentile of Republican vote.

Q Please.

A 65.71, 71.12 per cent, 68.79 per cent, 60.92 per cent, 67.59 per cent, 64.10 per cent, 59.32 per cent, 64.04 per cent, 61.90 per cent, 67.10 per cent and so on-- 62.5 and 65 per cent.

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Q All right. That is sufficient, I believe. All right. If we could, let's have the next exhibit, please.

MR. EASON: Can your Honors hear him all right from that position?

JUDGE WOOD: Fine.

A I don't know if it is this way all over the state, but in Bexar County you can't get a map showing the precincts, the county and the city on the same map, so this just shows the county precincts in Bexar County.

JUDGE WOOD: Now for the record, please, identify it by exhibit number that you are speaking of there.

A This is SAR Number 3. This is the Bexar County map showing the yellow part is the-- where the Republicans carried in that precinct. And again, showing the senatorial lines here-- the new ones (indicating).

Q All right. Now, this is the same race as the last exhibit? Is that correct?

A The same race. These three maps here are the Eggers-Smith governor's race in 1968.

Q Why isn't the 21st district colored

yellow there where you just read from on the other map?

A This just shows the county precincts.

Q In other words, that was in the city?

A Yes, sir.

Q And so it wouldn't--

A Yes, sir. It would be all this part and it has to be so big as to carry--

Q --But you have included in this the part of the county that are not incorporated in the city? Is that correct?

A That's correct. Just the numbered precincts.

Q All right. Now, the next one?

A And again, this would be the 1968 governor's race showing the new district on a statewide basis.

Q Now, this is-- read the exhibit number.

A This is Exhibit SAR Number 5. With the Republican percentages written here. I will read you some of these percentages. 35.5, 18.3, 14.7 and in Duval County, 8.3 per cent.

Q Now, this is Republican vote or what?

A Yes, sir. This is the Republican vote.

Q In the same election you have been

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discussing before and reading the percentages from in northern Bexar--

JUDGE WOOD: --But he is reading from old District 21.

A No, sir. This is the new district.

JUDGE WOOD: This is the proposed district 21?

MR. McDANIEL: If I might object to that, it is not proposed at this point.

JUDGE GOLDBERG: It is legislative redistricting board district.

MR. McDANIEL: The Precinct 21, yes.

JUDGE GOLDBERG: As decreed by them.

MR. McDANIEL: That is correct.

A And I will say again, according to this race, all counties in this new district are sixty per cent or more Democrat, except for Bexar and Guadalupe County.

Q All right. Let's have the next exhibit, please.

JUDGE WOOD: For sake of clarification, Mr. McDaniel, where it says "proposed", it is that which has been adopted by the Board?

MR. McDANIEL: That is correct.

JUDGE WOOD: All right.

Q All right. Please identify the exhibit by number.

A SAR Number 7.

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Q All right. What does this map--

A --This is, again, the governor's race of 1970 between Eggers and Smith, and the yellow precincts that Eggers carried and white part if the precincts that Smith carried. Again showing the new senatorial lines in it with the percentages written in of what the Republican, Eggers, received out of this--

Q --Well, don't bother reading those. Just explain the maps and we won't burden the record with reading all of these percentages in, but you have calibrated--

A --Sixty-five to seventy per cent Republican, yes, sir.

Q Yes, sir. Let's go on to the next one, please, sir.

A The next one is SAR-6 and again, this is the Bexar County map with the yellow being the Republican precincts with the new senatorial lines drawn in. Is that sufficient?

Q Now please identify that by number.

A This is SAR-8.

Q What does that depict, please?

A Again, this is the governor's race of 1970 and all counties where sixty per cent or more

Democrat, except for Bexar and Guadalupe counties.

Q All right, sir.

A This would be SAR-9. And this would be the 1966 senate race between Carr and Tower, again showing in yellow the precincts that John Tower carried in Bexar County. And this is the county map.

Q All right. What do 10 and 11 depict, please, sir? That is SAR-10 and SAR-11.

A 10 would be the city precincts with the yellow showing where Tower carried with the new senatorial lines drawn.

JUDGE WOOD: That would be the '66 election?

A Yes, sir. 1966. And the last one here would be on a statewide basis, 1966 Tower race, and this I did a little bit different. Three lines in each of these counties meant seventy per cent Democratic vote and (indicating) sixty percent Democratic vote and one line was fifty per cent Democrat of those counties.

Q All right, sir. Just take the stand again, please, sir.

(The witness resumed the stand)

Q Now, Mr. Archer, these maps were all made by you or under your direction or control? Is that

correct?

A Yes, sir.

Q And they do depict, as I recall, the old senatorial districts plus you have chosen three races, the one in 1966 between the gubernatorial race of Connally and Kinnerly, the 1968 governor's race between Smith and Eggers-- the 1970 governor's race, Smith and Eggers, and the 1966 Tower-Carr senatorial race.

A It shows the results of those elections with the new lines drawn in.

Q All right. And it depicts in the one instance the City of San Antonio, the County of Bexar and the third would be a state map on which the new senatorial district 21 is laid out?

A Yes, sir.

Q And the purpose of these is to show the voting records of the areas to the extreme majority of the new district and those of the southern section? Is that correct?

A Yes, sir.

Q During your experience working with the Republican Party in Bexar County, this area that we are talking about in the new 21st District, is this a

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Republican or Democratic area or conservative area?

A This new part in the 21st District in San Antonio is the heart of the Republican area.

Q All right, sir. Do you feel they have any common community of interest with the people down in Starr and Jim Hogg and Duval?

A No, sir. Not a bit.

Q Do you feel if they had come into the southern part of the county as they did under the old senatorial redistricting, that there would be more compactness of the district?

A There is no doubt about it being more compact that way.

Q Do you feel there would be more community of interest?

A I would say there would be more community of interest on the southern district, taking in the southern part of the county just like if you went the other way and took in the northern counties to make up a district-- you would take in the north side of San Antonio.

Q Now, you have also prepared, but we are not going into now, your proposals, should it become necessary for a new senatorial redistricting and also for

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single-member legislative redistricting? Is that correct?

A Yes, sir. That's correct.

MR. EASON: Pass the witness.

JUDGE WOOD: Did you present, Mr. Archer, any of your proposed plans or maps to the Board at any time?

A Yes, sir, Judge. I was the first witness to the Legislative Redistricting hearing that they had in San Antonio. That was a subcommittee of the Texas Legislature that met down there in March.

JUDGE WOOD: And you presented the plan for both the legislative as well as the senatorial redistricting for Texas?

A I presented a congressional plan and a State House of Representatives plan and in the State Senate plan, I worked in conjunction with the Republican Party.

JUDGE WOOD: That's all.

A And I also appeared before the Redistricting Board up here.

JUDGE WOOD: In Austin to testify?

A Yes, sir.

JUDGE WOOD: I have no further questions.

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Thank you very much.

MR. McDANIEL: May I cross examine?

JUDGE COLBURN: Yes, sir.

CROSS EXAMINATION

Questions by Mr. McDaniel:

Q One of the bailiffs has gone to get the pretrial order of the San Antonio Parties which has attached to it the State Senate redistricting plan. I want it for purposes of my cross examination about District 21. Here is a copy I will hold it here because of the smallness. Mr. Archer--

MR. McDANIEL: May I approach the witness?

JUDGE COLBURN: Sure.

(Mr. McDaniel approached the witness with an exhibit)

Q District 21 you have commented on as being noncontiguous and noncompact, have you not?

A Well, in my opinion it is not compact, no, sir. Not the part of Bexar County. It is compact and the rest of it.

Q All right. District 25 which is an adjacent district goes from Comal County clear out to

Culberson County, does it not?

A Yes, sir.

Q Do you know your Texas geography well enough to estimate the approximate distance across that district?

A Well, I drove out there last summer. What could it be? 250 miles or 300?

Q It is closer between 400 and 500. District 25 is not compact, either, in any sense of the word, is it?

A Well, the only difference in that would be out in West Texas it would be very sparsely populated and you have to make up a district of 361,000, so that is a big area that we are talking about and it is more compact-- I think-- I think you would say that 21 we are coming in and digging out an area.

Q Well, these counties and 21 down here and 21, with the exception of Webb--

A Is this a proposal or--

Q No, sir. This is the plan. Down here in Webb County where you have 72,000, other than that, these are all sparsely populated counties, too, aren't they?

A That's right.

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Q Out of Bexar County in District 21 do you know approximately how many Bexar County citizens were needed or conversely, how many people in Bexar County were put in District 21?

BY MR. McDANIEL:

A In round figures around a hundred and ten thousand in the new district.

Q In the new district, that's what I am talking about.

As you stated, it takes 361,000 people to make a senatorial district, does it not?

A Yes, sir.

Q Which means that somewhere in the state you have got to get a quarter of a million people joined to Bexar County, does it not?

A Yes, sir.

Q Now, in your judgment do the people in Terrell Hills and Alamo Heights---.

A Excuse me, just on semantics, I'm not saying draw them to San Antonio, that South Texas needs some more people to make up the district---.

Q I understand that, but the district -- I believe we can use one of your bigger maps for this and won't have to be walking around so much.

(REPORTER'S NOTE: Map is changed on the map stand.)

Q Would you say that the people up here in Alamo Heights and Terrell Hills share no community of interest with the people in Guadalupe County?

A I don't believe there is a community of interests between Alamo Heights and Seguin, no, sir.

Q I thought you said while ago that was the only county in the bunch that shared a community of interest.

A No, sir, I didn't ever say that. I said that Bexar County and Guadalupe County were the only ones that voted for a Republican, a little higher percentage than areas of South Texas.

Q Well, at least, they have that similarity then, don't they?

A You mean as far as intelligence?

Q As far as Republican vote is concerned.

A Well---.

Q What about Medina County on the west?

A Well, any time, I feel like, Mr. McDaniel, you've got a county that borders, you've got a little bit closer community of interests than you do going way down in the South, if you look at it according to markets and schools and churches and everything like that. I don't think there's really a community of interests, not in that

part of Alamo Heights from Medina County; if you took in a little portion, say, of the western end of the county, you might could justify it.

Q Let me ask you this. Would you think they would have any more community or any closer political affinity, those Republicans in Alamo Heights and Terrell Hills, if they were in Senator Bernal's district?

A Would you repeat that again?

Q I say, would the Republicans out in Alamo Heights and Terrell Hills in the northern part of Bexar County have any greater affinity of interests or political philosophy with the people in Senator Bernal's district than they have with people in District 21?

A Being that they come from San Antonio, I would say there is a lot more community of interests, but also just north of Alamo Heights proper was in Bernal's old district.

Q Now, if the community of interests then depends on San Antonio, then don't the people down here in Senator Kothmann's district have the same community of interests with San Antonio as they would have with the people in District 21?

A No, sir.

Q You realize, of course, that this----.

A What I am saying is that you have more of a community of interests if you have to take a few people out of Bexar County. No county is going to come out with exactly two or three State Senators. You are either going to have a little bit more or a little bit less than a whole number. Is that right?

Well, that's correct.

A What I am saying is that you would have more community of interests if you have got the district that comes from the south upwards to take in a southern portion of the county. See what I mean?

Q Well, I can see what you are talking about as far as geometric nicety is concerned, that it might look prettier if it were across the bottom of the county and made a U-shape rather than circling the county, but if the community of interests is oriented on San Antonio, do the people in Senator Rothmann's district have any less community of interests with San Antonio than the people in Northern Bexar County?

A Well, out in the northeast part of the county is probably the most affluent part of Bexar County, and I would say that the southern part is less affluent.

Q Well, the affinity with the City of San Antonio does not depend on affluence, does it?

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A No, but I am just saying that the economic make-up of the district, looking at it that way, that the southern part of Bexar County would have more in common with the southern district.

Q Why?

A For economic reasons for one.

Q For what economic reasons?

A Well, let's just say the median income of the families that work out there.

Q Well, are you saying this because the people in lower Bexar County are poorer than the people in Northern Bexar County that they have more community of interests with the people, say, down in Webb or Zapata County?

A I think their income would be closer to being the same.

Q Now, you recognize that this few people that you are referring to, this hundred and ten thousand, has got to come out of Bexar County somewhere.

A Well, I mean to make it a lot easier to draw these lines, if you would change it and put it up another way, then you would mess up the plan for the whole State of Texas, that's right.

Q Well, I'm not talking about that so much as I am the fact that---.

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A This is kind of like working a crossword puzzle. When you move one thing, then you have got to make changes all over.

Q Yes, I understand that. What I am driving at is whether the people are taken out of the north part of Bexar County or the south part of Bexar County. District 21 is still going to be an awfully large noncompact district, is it not?

A It will be an awfully large district, being that the lower part of the State of Texas is sparsely populated, but if you come up and took the hundred and ten thousand people out of the southern end of Bexar County, it would be a lot more compact, and you would come closer to making, say, a square them having to draw little lines up and come in with a---.

Q Now, Medina County and Guadalupe County, which are in District 21, go as far north as Bexar County, don't they?

A Well, Guadalupe is a little bit farther north, I believe.

Q So, geometrically speaking, if we are talking for the moment about geometrics, for whatever value that may have in drawing congressional districts, geometrically speaking, there is a bordering area there with District 21

in North Bexar County, just as there is in South Bexar County, is there not?

A Well, Mr. McDaniel, what you are talking about on this is that these other counties are more rural oriented counties, and the northeastern part of Bexar County is anything but rurally oriented.

Q Well, are you saying that if we took a hundred and ten thousand people out of South Bexar County---.

A You can always look for something and say that there might be a commonness of interests, as the churches in Northeast Bexar County like there are in other parts, and things like that, but I am talking about the big factors that you look at. There's no commonness of interests.

Q Well, to get a hundred and ten thousand people out of Bexar County we have got to get some people out of the City of San Antonio, haven't we?

A Yes, sir.

Q Now, the people in San Antonio, whether or not they come out of the southern part of San Antonio or the northern part of San Antonio are urban people, are they not?

A There's a good part of the southern part of Bexar County that is more agricultural.

Q Do you think there's a hundred and ten thousand people in that agricultural area of Bexar County?

A No.

Q Well, now, I am talking about the number of people that you have got to take out to get this hundred and ten thousand. They are going to have to be urban people, are they not?

A Yes, sir.

Q And those urban people, regardless of which urban people they are, are not going to have the same interests as the rural people in, say, Zapata or Jim Hogg or Starr County, assuming their interests are rural and agricultural? They are different, aren't they?

A Well, there could be a little bit of difference, but if you look at it on that basis, then you could say that you could never have a commonness of interests with anything.

Q So you suppose, really, that you can have a commonness of interest in a district, say, that of necessity runs from Guadalupe County and Medina County clear down to Zapata and Starr County?

A Would you state that question again?

Q I say, do you suppose that you could ever really have a community of interests in a senatorial district

which runs from Medina and Guadalupe County on one end down to Zapata and Starr County on the other end?

A Yes, sir, I think you could have.

Q Well, by the same token, do you have a community of interests them in a district that would run from Comal County clear out to Culberson County, a distance of some 500 miles?

A I'm not familiar with that.

Q Well, that's District 25 we were talking about.

A I don't know what the make-up of those counties is.

Q Well, all right, let me put it this way. You are familiar with the City of Uvalde, are you not, or the City of New Braunfels? It is in Comal County.

A I am familiar with New Braunfels.

Q And you are familiar with the City of Pecos, perhaps, are you?

A I wouldn't say I am familiar with them. I have just driven through the towns.

Q What about Midland?

A I have been there once.

Q Would you venture an opinion as to whether Midland and Pecos have a community of interests with New

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Braunfels?

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A Mr. McDaniel, I couldn't really say that, because I don't know anybody in either Pecos or Midland. I have never visited there or---.

Q But you are willing to say that the people in Seguin and Guadalupe County would have a community of interests with, say, San Diego in Duval County or Laredo in Webb County. Is that correct?

A What I am saying is that Guadalupe County is more -- you might say a little more agricultural. San Antonio and Bexar County is an urban county.

Q And the whole county is pretty much urban, isn't it?

A Fairly much, yes, sir.

Q So that somebody had to make a choice about which hundred and ten thousand people to take out of Bexar County?

A That's right.

Q To go in another senatorial district?

A That's right, somebody had to make a choice, but there is what you call fair play, too.

Q Well, now, why would it have been any fairer to have taken that hundred and ten thousand people out of some other part of Bexar County than out of the northern part of Bexar County?

A Well, what I was trying to show on all these maps is the dilution of the Republican vote. It just so happens that that area taken out is the heart of the Republican vote.

Q Well, I take it that you would agree that it would be virtually impossible, at least, without the most flagrant sort of gerrymandering to draw a senatorial district in that area of the state with 361,000 people in it which would have a reasonable chance of electing a Republican senator.

Would you take that as a fair statement?

A That it would be hard to draw one?

Q That it would be very hard to draw a district in that part of the state that would contain 361,000 people and have a fair chance of electing a Republican Senator.

A Well, I'll tell you the truth, Mr. McDaniel, I never looked at these or I never tried to draw anything, even for our own purposes, with the Republican Party in mind. We drew it to what would be fair for all citizens of San Antonio, and I think it would be very easy to draw a fair state senate line for Bexar County that is fair to everybody in Bexar County.

Q Well, you are complaining as a Republican.

Are you saying that you could draw a senatorial district in Bexar County in which you could elect a Republican Senator, 361,000 people district?

A I don't know if it is -- of course, that all depends on who the candidate is, but, like I said before, we can draw lines that would be fair to the whole citizenry.

Q Would you go so far as to say that it would have been fairer, instead of putting this in 21, if they had come north up through Kendall and Kerr and Kimble and on out here clear to Midland to get the Republican vote out there, which is pretty heavy sometimes?

A No, sir, that wouldn't be fair at all, but if you wanted to take in on drawing these lines -- if you wanted to take in a few northern counties, then why not take the northern counties that border on Bexar County? I don't think you have to run a little line 400 miles out there. The people are right there.

Q If you take these counties which are to the north of Bexar -- would you look at the map for a moment and tell the Court how many people there are, for example, in Kendall County?

A According to these figures 6,964.

Q All right. How many are there in Gillespie

County?

A 10,353.

Q How many in Kimble?

A 3,904.

Q How many in----?

A You are going to some little counties.

Q How many in Sutton?

A 3,173.

Q How many in Mason?

A The figures are so small I can barely read them, 3,356.

Q How many in Llano?

A Where is that?

Q Llano is the one right up here straight north that you said I was venturing too far west.

A 6,979.

What I mean is, you can take and make an arc. You don't need to draw a line.

Q Well, but you can't make an arc when you are working with counties that have five or six thousand people in them and come up with a half million people without making an awful big arc, can you?

A Well, where did you get the half million people figure?

Q Well, the half million is the number of people that it takes to make up a congressional district with the hundred and ten thousand coming out of Bexar County.

A No, sir, that's not right. It would take a quarter of a million.

Q What did I say?

A You said a half million.

Q Excuse me. I meant to say a quarter of a million.

Let me rephrase my question then. It takes an awful lot of five and six thousand counties to add up to 250,000?

A That's right, but it would be a lot fairer than if you take out of Bexar County to go west and take the western part of the county. Don't you think that would be fair play?

Q Well, let's examine that for a moment.

You would in that instance have to take those counties which are presently included in District 23 and some approximately out into the Midland area at least, would you not?

A Well, now, you're talking about on a state map if you have already got those other districts already drawn in. If you are going that way, you would have to

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start over with the whole State of Texas.

Q That's the point I am driving at, of course. If you did that going up this way (indicating), 35, which is all these sparsely populated counties out here, would have to go down here into 21 or somewhere else, would it not, because it is going to have to have its 361,000 people, too.

A You have to get them from somewhere. That's right, but, like I said earlier before in the week, we did present a proposal---.

Q Well, now, what did your proposal do?

A Well, we have it right here.

Q Do you have it handy?

A Our attorney has it right there.

(REPORTER'S NOTE: Counsel produces document.)

Q Now, your proposal then comes back to the proposition that we were talking to while ago, and that is, take the people out of South San Antonio, rather than out of North San Antonio, does it not, and I again turn to the same question I asked while ago.

You have the same dissimilar urban and rural

interests there as you have in the present composition of District 21, do you not?

A Mr. Mutscher, I really feel like there is a lot more commonness of interests because all of these census tracts down here -- this is all rural part of Bexar County, forming part of the community.

Q Is there anything close to 110,000 people---.

JUDGE WOOD: So the Court Reporter will know, what exhibit number are you referring to?

MR. McDANIEL: It is SAR-14.

JUDGE WOOD: All right.

A Then you would get your heavy concentration of people that would go into this 187,000 up here (indicating). This area along in here would be south of IH410, and those people out there would be -- well, you know, say, Union people or I am talking about -- I would just say that they have a lot more in common with the people going down south.

Q Don't you suppose that these people down there might be equally upset by not being in a senatorial district which was predominantly a Bexar County senatorial district? I mean equally with you, equally as you are?

A I don't think they would be, because that

is the way the district is. That's the way it was in 1970 basically.

Q But San Antonio has grown, has it not?

A Yes, sir.

Q So that these district lines had to be re-formed, did they not?

A Yes, sir.

Q Mr. Archer, Mr. Korbel testified yesterday, I believe, that from his study of the voting patterns in San Antonio that the highest vote in the Republican Primary in San Antonio was 5,000 some-odd votes. Is that approximately accurate?

A That's the highest you mean it has ever been?

Q That was his testimony, as I understand.

A I don't believe that is right. That is what it was from my race in 1970, but I believe about in 1960 -- I think ten years before that in 1960 at one time there were nearly twice that many that voted in the primary.

Q In the Republican Primary?

A Yes, sir.

Q What is the approximate population in this area that comes right in here on District 21 (indicating),

looking at Exhibit SAR-2, this area which includes Alamo Heights and Terrell Hills.

A Where would you start the line coming in?

Q Let's say---.

A There would be about 100,000 people that makes up the Bexar County part of this new 21st District, but you mean just in Alamo Heights and Terrell Hills?

Q Yes, this area right in here (indicating).

A Sen, you are going way out, now.

Q Well, let me rephrase the question.

Approximately how many Republican voters do you suppose you have in there? Have you made any effort to determine that based on the Senate race or the Governor's race?

A We took the percentage of the vote.

Q I realize that, and that is why I had hoped you would run out the percentage figures to total.

A 110,000 people and there you come in, that's where most of the population comes from.

Q The percentage figures I recall were around 60 percent, so am I correct in assuming that there would be around 60 to 70,000 Republican voters at best in that area, even assuming you go by the senatorial races and Governor's races, rather than primary?

A Well, I wish there were that many, but the 110,000 people takes up everybody from children on up. If it is just voters, it would be a whole lot less than that.

(No omission here.)

Q That is a valid point, I had forgotten we were talking about people, rather than voters. Your point is well taken.

A That is the heart of the Republican district, there is no doubt about that.

MR. MCDANIEL: I don't believe I have any more questions.

CROSS-EXAMINATION BY [illegible]:

Q Mr. Archer, what does this exhibit right here, what is this exhibit number right here, that first one?

MR. CURRY: That is Exhibit SAR-9.

Q All right, on Exhibit 9, do the yellow portions shaded -- shaded portions -- represent the Republican areas of Bexar County, the whole area? Is that the Bexar County map, first?

A Yes, that is the Bexar County map.

Q Now, do the yellow shaded areas represent the Republican -- those that you have designated as Republican voting areas of Bexar County?

A This would be -- That top map there, sir, is the 1966 Bexar - Carr race in which the yellow part would be where John Tower got --

Q All right. Now, then, do you have me showing the 1970 --

A Yes, sir. The latest --

Q Let's look at '71. Let's get --

A That is the County map.

Q That is the County map? Is that for '70?

A Yes.

Q Does that area up there show the Republican areas -- between the Republicans and the Democrats?

A Yes.

Q How many people are in that area? How many people would you --

A That is sparsely populated; that is the County --

Q I am saying that whole shaded area that voted Republican.

A There are not too many people out there. That is right out there around --

Q Does that include the --

A The next map -- No. The next map would be the City map.

MR. CURRY: This is SAB-6.

MR. EASON: This has to be used in conjunction with the City map that you just looked at.

Q This is a City map?

A Yes.

Q Now, in this shaded area I am looking at Exhibit what -- what number is that?

MR. CURRY: SAR-7.

Q Is that shaded part there in yellow the Republican area of San Antonio?

A (Witness nods head).

Q How many people are represented in that whole shaded area there -- that whole shaded area -- whether it be 21 or 26 or 20?

MR. MCDANIEL: Or 19.

Q Either 19, 21 or 26?

A How many people are represented?

Q Yes, approximately in that shaded area?

A Maybe 300,000.

Q All right. Your contention is --

A That is people.

Q That is what I was surmising, there would be about 320,000 people in that area. Your contention is that they have cut up that area into three parts

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just like they did -- Isn't that your contention?

A Like who?

Q Divided the strength of the Republican Party?

A Yes, sir.

JUDGE WOOD: All right. That is all I wanted to know.

MR. MCDANIEL: May I ask a question or two?

JUDGE WOOD: Yes, sir.

CROSS EXAMINATION

QUESTIONS BY MR. MCDANIEL:

Q In your percentage figures on that map, which is the governor's race of 1970, indicates 51.14 here, some 60's and some 50's in others across here. You have got 48.41 there and you don't have the percentage figure over here. I take it your division line is 50 percent, is that correct?

A That we drew the yellow --

Q Yes.

A Yes, that means that Eggers got one more vote than Smith did.

Q All right. And, I also take it from looking at this map that this is not a full and complete map of the City of San Antonio?

A Well, that is a complete map of the City, and the one above that was the County map with the County precincts, see?

Q No, I don't think you understand what I am saying. I am looking at these lines on here right now. (Indicating). Does this include the whole City limits on this map?

A Yes, sir, that is the City limits.

Q Now, this is the County map, of course, and I am correct in my assumption, am I not, that the area that is within the City here where it says "See the City map" on SAB-6, which is still the Governor's race of 1970, this area in here, I take it, including that, is the City which was covered on the other map and is the heavily populated part, is that correct --

A Yes.

Q -- of the City? All right. Now, this, I take it, is the complete -- looking at the County map 26th District, is that correct?

A No, sir. Well, this is the complete -- were you talking about the line going out?

Q The 26th District here.

A Inside there is the 26th.

Q All right, sir. And, it is all an urban district, is it not?

A Yes, sir.

Q All right. Now, this is the approximate center of the City of San Antonio, is it not?

A The center?

Q The center of the City of San Antonio?

A Yes, sir.

Q Now, Senator Kothmann's district, which is 19, is approximately the complete southeast half of Bexar County, is it not?

A (Witness made head).

MR. CURRY: You will have to speak out.

A Yes, sir.

Q Now, is it correct to assume that the population density in this half of the County is somewhat less than it is in the northeast half of the County?

A On density and taking in the whole county, yes, sir.

Q All right.

A But, you see, there may be a reason for that, if I might explain just a little bit. You see,

up in the northern part of this 26th District, it is a Republican District, anyone can see on the map.

Q I can see it on the rural area, which you would agree is the less populous part of it here.

A Well, put it down here, then, on the City map.

Q I am going to -- I understand it comes down in here also.

A But there in the yellow part is a Republican district, as you can see on the map.

Q Uh-huh.

A The reason for that is in the makeup of the district as people were consulted on what district they wanted, as it goes in politics, to run for the State Senate for to be a Senate Senator, you have to live in that district.

C. E. - Archer

CROSS EXAMINATION

Questions by Mr. McDaniel:

Q All right.

A And, that Republican district out there is where state Senator Bernal lives.

Q Isn't that what you are saying, Mr. Archer, is that the Republicans in San Antonio are discontent because Senator Kothmann had a Democratic district drawn and the Republicans in north Bexar County did not have a Republic district drawn, isn't that what it boils down to?

A No, sir. We didn't ask for a Republican district, we asked--

Q I am not asking what you asked for. But, that is the source of your discontent, is it not? You would like to have-- and this is what his Honor was pointing out a moment ago--

A That is not-- What we are contending is there is no commonness of interest between the portion there of northeast Bexar County and the rest of South Texas; it goes all the way to Duval County and Laredo.

Q All right. But, you have already admitted that the interest of Bexar County is urban and that that

urban interest, regardless of what area of the county is involved, has nothing in common with Zapata County, for example, isn't that correct?

A It has more in common on the southern edge of the county.

JUDGE GOLDSMITH: Why? You keep saying that, but why?

A Why does the southern part of the county--

JUDGE GOLDSMITH: Yes.

A First of all, sir, there is farming down there on the southern part. And, I would say--

JUDGE GOLDSMITH: You mean in the southern part of Bexar County?

A Of Bexar County, yes, sir. And, secondly, I would say the income level of the average person that lives out-- if you took 118,000 people out of the southern part of the county and if you averaged their income-- that is would be a lot closer to being in the same with the average person in each of these other counties of South Texas than you would with the northeast part of Bexar County. That is your highest income people are out there, all across the northside of Bexar County. You just draw a line straight across.

C. E. - Archer

BY MR. McDANIEL:

Q What other interest do they have in common?

A Well, then, if you took the income level, then, their cultural differences would be different too. But, the entertainment, breeding-- I mean, that is just small points, but--

MR. McDANIEL: I don't believe I have any more questions, Your Honor. Thank you.

MR. EASON: I don't believe I have any more questions.

JUDGE WOOD: Mr. Archer, you may step aside.

MR. EASON: Your Honor, this will conclude my portion of the case. And, in lieu of summarizing the deposition, which I find would be very hard to do, we spent nearly a whole week taking the depositions and I know the Court would do it-- that they do contain a very large portion of this case and I would like to call their attention specifically to pay close attention to Mr. Robert Spellings' deposition relative to the time element, the

amount of supervision and control and the mechanics and actual procedure of drawing these maps at the time.

JUDGE GARZARINO: We will assure you we will read all of the depositions.

JUDGE WOOD: Mr. Mason, we have been reading them all during the trial at night, so we are very familiar.

MR. MASON: I understand that and I didn't mean to infer anything else except that a good part of my case is built up by my questions and answers in those.

JUDGE GARZARINO: What we haven't read we will read.

JUDGE JUSTICE: It looks like pretty much of it is contained in depositions.

JUDGE GARZARINO: That completes your case?

MR. MASON: Yes, sir. The San Antonio Republican plaintiffs rest.

JUDGE GARZARINO: That leaves what, now? That leaves Mr. Luna.

MR. RICHARDS: Before we consider that, there are a couple of formal matters that I want to get clear. We have offered for the

record before our case was closed out on the side of the Plaintiffs, Your Honor, with reference to a couple of depositions and I want to be sure it is in the record.

JUDGE GOLDBERG: Before we terminate the case we will be sure that all the depositions and all the documents are in the record, but let's talk about live witnesses.

MR. RICHARDS: No more live witnesses.

JUDGE GOLDBERG: How many live witnesses do you have, Mr. Luna?

MR. LUNA: I have three, Your Honor, two of whom are here this afternoon and the other one will be here in the morning.

JUDGE GOLDBERG: Would it be more convenient to you and us to hear the one witness now so that he can go back to his business?

MR. LUNA: I am sure it would be.

JUDGE JUSTICE: Is he likely to be a lengthy witness?

JUDGE GOLDBERG: I think we ought to certainly accommodate him. Is that satisfactory with you?

MR. CURRY: Yes, sir.

D. H. - Brown

L. H. BROWN,

a witness called by the Defendant, after having been first duly sworn and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Lemmon:

Q What is your name, please, sir?

A L. H. Brown.

Q Where do you live, please, sir?

A At 6361 Birch Lane, Dallas, Texas.

Q And, what is your age?

A Fifty-five.

Q How long have you lived in Dallas County, Texas?

A For forty years.

Q Do you serve in any official capacity insofar as the political system is concerned?

A Yes, I do.

Q What is that capacity?

A First, I am precinct chairman of the Democratic Party.

Q What precinct number?

A It is 326.

Q All right, sir.

A And, I am on the executive committee, Democratic Party, and other organizations politicalwise.

Q How long have you served as a precinct chairman and a member of the Dallas County Democratic Executive Committee, Reverend Brown?

A As a chairman I have been there ten years.

Q Is that the immediate past ten years?

A Yes, sir.

Q And, have you also been appointed as election judge to hold most elections in your precinct over that period of ten years, including Democratic primaries and general elections?

A I have. The city, also, and school elections.

Q Reverend Brown, what age man are you, sir?

A Fifty-five.

Q With respect to color of the people who live in your precinct, are they Black, White or part of both?

A I have ethnic groups of Mexican-Americans and Whites and what we call Blacks.

Q What precinct Black?

A Oh, possibly -- well, 80 precinct.

Q As President Chairman and Election Judge, Reverend Brown, have you worked with everybody in this precinct for a number of years, regardless of their color?

A Oh, yes. I have won the support and the admiration of all of our groups, for they call on me for many things, concerning the civic work.

MR. CHURCHWELL: Your Honor, I think he can answer the question without elaboration and without self-serving admissions think we cannot cross-examine him on, because the people are not here.

THE COURT: Well, we have been pretty liberal in letting everybody talk about themselves pretty much, and I don't want to be in a discriminatory mood this late in the afternoon, but let's get along.

Q Reverend Brown, I want to ask you whether or not you are familiar with an organization called the Democratic Committee for Responsible Government?

A Yes.

Q Were you also worked with that

organization?

A I know.

Q Do you, in addition to your duties as precinct chairman, and a member of the Executive Committee, serve on the Board of Directors of the Democratic Committee for Responsible Government?

A I do.

Q Is there -- well, that Board is what? 15 people?

A That's right.

Q Is there any other Black person on that Board of Directors besides you?

A Yes.

Q What is his name?

A H. V. Baldwin.

Q Is he also a precinct chairman?

A Yes, he is.

Q Now, is that organization primarily a precinct type organization?

A Well, I wouldn't say that, as I would see it. It is all connected.

Q All connected?

A Yes.

Q All right. Now, Mr. Brown, you have

worked in many campaigns for legislatures over the last several years, have you not?

A I have.

Q I want to ask you whether or not you feel that the multi-member district theory of representatives in the State Legislature is more effective for the Black community than single member districts would be?

A I do.

Q Reverend Brown, in your opinion, is there any discrimination against the Black people in the community simply because of the members of the Legislature being elected county-wide?

A No.

Q Reverend Brown, what is your personal preference for the election of members to the Legislature, single member districts or county-wide?

A County-wide.

Q Would you tell us why, please, sir?

A Well, I feel that if a man is running for a State office, he becomes a State man from that district and it would give us more power and more strength for a man to run county-wide to help the whole--

Q To help the whole county?

A Right.

Q Reverend Brown, in making decisions and putting together a Democratic ticket for the Legislature, do you have anything to say about it?

A Beg your pardon?

Q Do you have anything to say, any input in putting together a ticket for the Legislature in Dallas County?

A I do.

Q Are there other Black leaders who also have something to say about it?

A Yes.

Q As that ticket is being put together, Reverend Brown, insofar as the Black membership or members of the ticket, who decides on what Blacks will be urged to run? Is it the members of the Black community or some downtown group or other group?

A Black community.

Q Black community? Now, were you in Dallas County and active in politics -- you have told us you were in the County -- when the Honorable Joe Lockridge was selected to run for the Legislature?

A Yes.

Q Did you participate in the selecting and recommending of Joe Lockridge?

A Definitely.

Q All right, sir.

A The one who represented us in these cases was President of our Intercommunications line, Reverend S. M. Wright, and whenever he speaks, that is us.

Q Reverend S. M. Wright?

A Yes, sir.

Q And he works with your group?

A Yes, sir.

Q And he is the president, I believe.

A I work with his group.

Q All right. Now, was that you mentioned Reverend S. M. Wright, brother as you know, is he the first Black man from Dallas County who was ever appointed to a state board by a Governor of Texas?

A To the best of my knowledge, yes.

Q Who appointed him?

A Governor Connally.

Q Did he ever get to serve on that board?

A No, he didn't get to.

Q Why not?

A One of our Senators decided that he didn't want him on there.

Q One of our Senators from Dallas County?

A Yes, sir, I think so.

Q Is he in this room, today?

A I believe so. I believe so.

Q All right, sir. Now --

A -- yeah. I believe so.

Q Now, Reverend Brown, so then the first Black man who was appointed to a State Board didn't get serve because a white Senator from Dallas County objected to it? Is that correct?

A Yes.

Q You know the Honorable George Allen, a member of the City Council?

A I do.

Q Are you aware that Mr. George Allen was not elected Mayor pro tem?

A Yes, I am.

Q I want to ask you whether or not his failure to be elected Mayor pro tem was because he was Black or was it because of some other factors that had nothing to do with his color?

MR. RICHARDS: I assume, Your Honor, unless this witness somehow participated in the vote on this, it might be somewhat remote from his knowledge.

JUDGE JENKINS: This is before the Court, so we can take such things into consideration.

Q You may answer, Reverend Brown?

A May I answer all right? To my knowledge, and with my help, we were trying our best to give George the go sign, which he got it and at the last moment, everything else turned up that reflected upon his character, on his managerial ability, on the way I see it, and the way I used it, and that hindered him. It was not otherwise. It was brought out.

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Q Did it have anything at all to do with the fact that he is Black?

A No.

Q Now, Reverend Brown, Mr. George Allen is a friend of yours and you worked for his election, didn't you?

A Oh, yes.

Q Reverend Brown, are you familiar with the raised highway in Dallas County that the Black community wanted lowered?

A In the Spence community?

Q In the Spence community.

A Yes.

Q Was the Dallas County delegation, which was elected countywide, effective in helping the Black community get that problem solved?

A Very much so.

Q I want to ask you whether or not, in your opinion, had we only had one Black member of three, whether or not you think one or two or three members could have done that job?

A No, sir. I don't think so at all. A team.

Q Reverend Brown, have you already been

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working with other Democrats in Dallas County in trying to seek out and urge Blacks to run for office?

A Yes, sir.

Q Are you and the other members of the Black community working now on making recommendations to people to run and urging them to run?

A Three people.

Q Three people?

A Yeah.

Q All right. Now, in your opinion, based on your experience, as a member of the Democratic Executive Committee, and helping elect the members of the legislature in the past, if we have a countywide election as we have always had, how many Blacks in 1972 will be elected to the legislature, assuming that the Democrats predominantly win over the Republicans?

JUDGE GOLDBERG: That involves a crystal ball and we have been doing a lot of ball gazing and I am going to let him go ahead, but let's try to confine this within reason.

MR. LEON: All right, sir. I will withdraw the question, Your Honor.

Q At least you expect to attempt to urge three well-qualified and active Black Democratic candidates

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to offer themselves for election?

A I am.

Q And other Black leaders that you are working with are working toward that same end?

A Yes.

Q In the election process and in selecting candidates for the legislature in Dallas County, Reverend Brown, do you feel that the Black community is shown any, what has been termed here "paternalism", or is there a full working partnership?

A Full working partnership.

MR. LUNA: Pass the witness.

JUDGE COLDBERG: Cross examination by anyone?

MR. CUNNINGHAM: Your Honor, may we have a few minutes, please?

JUDGE COLDBERG: Yes.

(There was a discussion among Plaintiffs' counsel at the counsel table outside the hearing of the reporter.)

MR. CUNNINGHAM: The Plaintiffs pass this witness, since it seems that—

JUDGE GOLDBERG: --No questions? Mr. Curry? Mr. Jaworski? 911

MR. RICHARDS: You are going to cross?

MR. CURRY: I have one question, Your Honor. I am sorry.

MR. RICHARDS: I think it is part of the direct.

MR. CURRY: That's correct.

MR. RICHARDS: I thought Mr. Curry was part of the direct examination.

JUDGE GOLDBERG: Go ahead, Mr. Curry.

NANCY KINCHINGTON (Continued)

Questions by Mr. Curry:

Q You identified a senator as being in the room who prevented the Black from receiving the appointment. Did you indicate his name?

A No, I did not.

Q Who is it?

A Well, do I have to divulge it? I would like to-- I wouldn't like to. That is unethical to me.

JUDGE GOLDBERG: I don't think that is necessary.

MR. IRWIN: I would like to ask one question of this witness. Just one.

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C. E. - Brown

CROSS EXAMINATION

Questions by Mr. Irvin:

Q My name is Walter Irvin, Mr. Brown. Is that is?

A That's right.

Q What street do you live on in Dallas?

A Burquin, B-u-r-q-u-i-n (spelling). 5341.

Q What part of Dallas?

A Southeast Dallas.

Q Up there by Crazy Courts?

A Not that far out.

Q Not that far?

A Not that far.

Q The one question that puzzles me is that you, as a member of the executive committee of the Democratic Party in Dallas, I think you stated you were seeking three well-qualified Blacks?

A Yes.

Q Is that true?

A Yes, we are. I am on the committee. I am not doing it myself.

Q You are a high school graduate?

A Yes, sir.

C. E. - Brown

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Q Are you a college graduate?

A No. Two years.

Q Do you have any profession or vocation?

A I am a minister. I have been a pastor for thirty-one years.

Q What other qualities that you are looking for in a-- what are the qualities you are looking for in a prospective Black candidate?

A What are we looking for?

Q Yes.

A We are looking for somebody-- well, I will say this as to what my part of it-- all of us that is on the committee have certain things that we are screening candidates on, but I am looking for a young, bright fellow who is able to have good judgment and be willing to be-- to shape his life the American way. Other mechanics, we can go into that in private.

Q Not that I am particularly interested in you finding me, but I wanted to know what you were looking for.

A I am looking at you, too.

JUDGE GOLDSMITH: Any cross, Mr. Richards?

MR. CHRISTENSEN: Nope.

JUDGE GOLDSMITH: I again wish to state

that we appreciate your patience during the day and we will start in the morning at 9:00 and hopefully complete. Court's adjourned.

(Whereupon Court recessed at 5:35 o'clock P.M. on the 5th day of January, 1972 to reconvene at 9:00 o'clock A.M. on the 6th day of January, 1972.)

WILLIAM H. CLARK, III

a witness called by the Defendants, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. LUCE:

Q What is your name, please, sir?

A Bill Clark.

Q For the record, Mr. Clark, would you give us your full name?

A William H. Clark, III.

Q Mr. Clark, what is your age, please, sir?

A Forty-one.

Q Where do you live?

A In Dallas, Texas.

Q How long have you lived in Dallas County?

A All my life except for school.

Q Speaking of school, what is your educational background, Mr. Clark?

A I received a B.A. from the University of Texas and then an L.L.B. from the University of Texas.

Q Are you a licensed practicing attorney at this time?

A Yes, sir.

Q Mr. Clark, after you graduated from law school, what did you then do?

A I worked for a year in the Attorney General's Office here in Austin as an Assistant---.

Q Assistant Attorney General?

A ---Assistant Attorney General.

Q Then after leaving the Attorney General's Office, Mr. Clark, did you go into private practice?

A I did.

Q With what firm?

A The firm was at that time named Clark, Ruhn (phonetic), Holt & Reed.

Q Would you tell us, particularly with respect to the law firm that you went with who founded it and when?

A It is my information that my grandfather founded the firm in about 1889 in Dallas.

Q How many of your other family members, and who are they, if any, have been with that firm?

A My grandfather passed away in 1931, I believe, and my father, Bill Clark, was in the firm at that time,

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BY - Clark

and by mother, Ann Clark, and my dad passed away in 1943, and my uncle, Bob Clark, was in the Air at that time, and then when Sammy Clark graduated from the school, he was with the first unit he went with the United States Government. My brother, Bill Clark, had spoke now with the first one,

Q Mr. Clark, this is the hard, the last name you told of in the Air? What unit is this?

A U. S. Navy.

Q Mr. Bill, your have any connection with politics in the State of Texas and Dallas County?

A He was a State Representative from Dallas County, and I believe held the office of Speaker of the House of Representatives for two terms during his tenure as a State Representative.

(No objection heard.)

A In Dallas, Texas.

Q Was he one of the earlier speakers to achieve the distinction of what was then a speaker?

A I believe that is correct.

Q Mr. Clark, would you tell us what type of practice your firm has?

A It is generally civil and corporate practice. In the course of representing our clients, we have to be versed in anti-trust, labor, administrative law and when necessary, appear before committees of the Congress and committees of the Legislature. General corporate and civil practice.

Q Now, Mr. Clark, moving away from your profession in practicing law, I want to ask you about your political endeavors. Have you been involved in politics in Dallas County?

A Yes, sir. Somewhat.

Q Have you ever held a political office in Dallas County?

A Yes, sir.

Q What office was that?

A Democratic County Chairman and then I was on the State Democratic Executive Committee for two terms.

Q Was that a member of the S.D.E.C. from

the Senatorial district?

A Yes, sir.

Q We have had a good bit of testimony in this record about an organization as the Democratic Committee for Responsible Government. Are you familiar with that organization, Mr. Clark?

A I am.

Q Do you now serve as one of its directors?

A Yes, sir.

Q Mr. Clark, I want to ask you in connection with your political activities, whether or not you worked in precinct campaigning and county-wide campaigning for candidates?

A Yes, sir.

Q Have you headed up a -- any campaign in Dallas County for National office, and if so, for whom and when?

A Well, I think the first time, I was flattered to be asked, along with Tom Suggs in Dallas, to head up the Johnson for President campaign in '64.

Q And did you serve in that capacity?

A Yes, sir.

Q Now, I understood another witness -- I

may have misunderstood him -- Mr. Weiner, to say he headed up that campaign. Maybe he was talking about a part of the County. Were you talking about County-wide?

A It was the Dallas County campaign for President Johnson, yes, sir.

Q All right, sir. You and Mr. Tom Boggs were co-chairmen?

A Yes, sir.

Q Mr. Clark, I want to ask you to tell us what type organization the D.C.R.C. is and how it operates.

A Well, D.C.R.C. is just a group of citizens who take an interest in their Government. It is strictly informal. It operates from the bottom, so to speak. The folks in the various precincts express their desires with regard to the feeling of their neighbors and we get together and see if we can't supply, in terms of candidates, and support, for candidates, the organizational backup for political campaigns.

Q All right, sir. And in connection with the selecting or supplying of candidates, I want to direct your attention in particular to the first Black candidate who ever successfully offered himself for election to the Legislature in Dallas County and ask you to tell us how

that happened, if you know, sir.

A Well, it has been a while, but I will try to recall the best I can.

In 1956, I guess it all started with the selection of the delegates to the National Democratic Convention. We have a substantial Negro population in Dallas and that population has been very generous in its support of Democratic nominees in the general election and to my knowledge, we had not had a Negro as a delegate to the National convention in some while, if ever, from Dallas County, and I guess some while from the State of Texas. And there was a gentleman living at that time by the name of Reverend Steele, who was held in quite high esteem by the Negro community and was president of the organization they call the Interdenominational Ministerial Alliance, and he was getting along in years and had a serious illness and it was pointed out to us that it would be a nice thing to do to put him on as a delegate.

Well, you only get four delegates, or at that convention we had four from Dallas and two alternates I believe, and I felt like it was the appropriate thing to do to ask Reverend Steele if he would consent to be a delegate, which he did. And in the course of my conversation with him, it became obvious that mainly it was then

that Dallas have a Black representative in Austin, which we had not had up to that time.

Q Let me interrupt you to ask you, was Reverend Estelle recommended to the convention as a delegate to the National convention and selected as such?

A Yes, sir.

Q All right. Go ahead.

A The Democrats had not fared too well in Dallas County up until that time. The Republicans, as I remember, won every race in which they entered a candidate

Q The election immediately preceding this?

A Well, for the decade preceding.

Q All right.

A So we felt like, you know, we ought to do something about this -- respect the Negro representation -- and so through Reverend Estelle and his successor to his church and his office, Reverend S. M. Wright, we conveyed to them that we would like to support a Negro candidate and did they know anyone who would be qualified to represent all of the people of Dallas in the Legislature.

And, so insofar as I am aware, the Negro community came together and they said that, yes, they

had a lawyer named Joe Loveridge, who they would like to propose and asked us to support him and we talked to Mr. Loveridge and found him to be a highly qualified man of great integrity and had all of the qualifications and probably more than that you might use, so we supported him and he won. And unfortunately, he died in a plane crash after his first year.

Q All right. After his untimely death, was there another Clerk who offered themself for election?

A Yes.

Q Who was that?

A Raymond Joe Rhine.

Q Now, would you tell the Court what you know about how that selection was made with respect to whether or not the black community participated in it?

A Well, we had a little problem. We had had quite a few vacancies there over the past years in Legislative races, and our problem was that the Democrats had never won a single one; the Republicans had won all of them.

Q All against Hispanics?

A Yes, sir. That may be an overstatement, but it is not much of one, if it is. This was very short. I think Joe died [illegible] after the primary election

and there was a special election called by the Governor to fill that spot, and so I remember, it was an open election, a general type, Republicans and Democrats and all. We had 15, 16, 17 candidates file for that. We felt like we ought to go back to the Negro community and ask them if they had another man they would like to have serve in the Legislature, and so I called some people that I knew in the Negro Community and tried to impress on them the urgency of getting together quickly and getting something done, so that there would be time to get their candidate elected.

So there was a meeting held by Negroes where they -- between themselves and it was a cross-section of the Negro community of Dallas. And they said they would like to have Reverend Holmes and the only problem was that Reverend Holmes wasn't sure he wanted to do it, and they asked me if I would go talk to him. So that night I went out to Reverend Holmes' church and met him for the first time and he consented to run. And we support all elements of our group. We got together with the Negro community and as a quite astounding thing for Dallas County, out of the field of 15 or 16 candidates, Reverend Holmes won without a runoff. So that is how Reverend Holmes --

Q Then the Democratic Executive Committee

wanted to put him on the ballot as the Democratic nominee for the general election that year? Is that correct?

A Yes.

Q So he was -- beat 17 others in the special election, the executive committee put him on as the nominee for the general election and then he won?

A Yes. I would say, his election where he was out of the field of 16 was to fill the unexpired term of Representative Lockridge and he then was nominated by the Democratic party as it's nominee for the next term.

Q By the way, to digress for just minute, there was some testimony in the record that the D.C.R.E. in the 1970 election supported at least one Republican. Did it happen that way, Mr. Clark?

A Not that I was aware of.

Q Now, was there one individual or perhaps more, but was there one individual who had been prominently associated with the D.C.R.E. who did support the Republicans?

A I believe that's right.

Q Who was that?

A Jon Blair.

Q And he is not now a director of the

P.C.A.C.?

A No, sir.

Q But the organization, as such, supported them in the general election of 1970?

A All Democrats.

Q And what were they called?

A The Legislature?

Q Yes.

A "15 for Dallas".

Q 15 for Dallas?

A Uh-huh.

Q All right, sir. Mr. Clark, I want to ask you to address yourself, if you will, please, sir, to the cost of elections to the Legislature in multi-member districts, as compared to single member districts. Now, by that I mean are there any cost savings, in multi-member districts or vice versa? If so, what?

A Well, that is a rather tough question to nail down, because we haven't experienced single member districts yet in Dallas County, but it would be my firm opinion that it wouldn't be any more expensive to run multi-member, and possibly less, than if we had 15 separate campaigns to run in single member districts.

Q All right. Now, why? Now, for

fortune, in the case of a slate is a newspaper of hundred? Does it -- do you run --

A -- it has the name of all of the candidates on it.

Q And so you would be running one ad with the names of all 13 candidates, instead of 13 ads for each one of them?

A Yes, sir.

Q Now, with respect to ballings, though, Mr. Clark, it has been pointed out here that to the roughly 300,000 voters in Dallas County, that it would be quite expensive to -- for the 13 members of the Legislature to mail letters to them or the candidates? How is that handled?

A Under our multi-member steup, our organization is based as close to the people as we can get it and that is with the precinct chairmen, whose their neighbors, you vote either for them or against them, and our candidates for precinct chairmen are usually opposed by others in the primary, and so we encourage our precinct chairmen to mail their precinct to their campaign for precinct chairmen. Well, when they do that, we include in the same envelope, at no additional cost, campaign literature for the 13 for Dallas.

B. B. - Clark

Questions by Mr. Lenz:

Q So, then, it is actually a savings in mailing versus separate campaigns?

A Certainly.

Q Of course, I guess, there would no reason in single-member districts why they couldn't slate up and perhaps follow that same procedure, would there, in which case the cost might be the same?

A It would be pretty hard to do in a single-member district, I would say.

Q All right, sir. Mr. Clark, maybe this is getting away from your expertise, but I am going to ask you about the costs for legislative candidates from a Republican standpoint; what would you visualize those problems to be?

A I haven't been able to be present during all these proceedings, but I noted within interest one witness said there were some pretty astronomical amounts, fifty or sixty or seventy thousand dollars, but I would think the Republicans could run a campaign, run their primary campaign, for less than the cost of a new Chevrolet. They only have 18,000 people, roughly, that voted in the their last primary.

D. E. - Clark

At the polling places the clerks checked everybody in and the party has a list of the registered voters and the list of the ones who voted. So, say, you had, as he said, 18,000 people, you know who they are and they have got a precinct chairman in each precinct. So, let's say, there hundred precincts in Dallas, 18,000 divided by three hundred is sixty, isn't it? All they have got is sixty people in that precinct, on an average, that they would have to get out to vote. And, you know, assuming you didn't use a telephone booth you could call all sixty of them free. If you wanted to write them a letter, you know, say fifteen cents a mailing that is six dollars and three is nine dollars. If you wanted to give each of them a bumper sticker that is a nickel, you know.

Q So, there—

A That is per precinct. And, let's say, you spend one hundred dollars per precinct on 18,000 voters, that is $1,800.00.

Q So, their primary cost should be less than the Democrats, is that correct?

A Undoubtedly.

Q And, isn't it a fact— at least the history of Dallas County is that on the Republican

D. E. - Clark

ticket they seldom have contests?

A I believe that is correct.

Q In the primary?

A Yes.

Q And, so then any cost they have would be the same-- in the same election where they run against the Democrats in the general election-- additional cost.

A I am sorry, I didn't understand the question.

Q I say: Any additional cost other than what you have told us about would be limited to their general election expenses running against the Democrats for the same office?

A That and the filing fee.

Q Yes, sir. Now, speaking of filing fee. To clarify our filing fee statute, Mr. Clark, it requires one to file an expense account only in a contested race, does it not?

A I can't answer that question.

Q All right. I want to ask you, Mr. Clark, your opinion with respect to the elections in 1972.

MR. RICHARDS: Your Honor, if the Court please--

JUDGE COLEMAN: Let him ask the question. 1941

MR. RICHARDS: You just thought I was going to object, Your Honor.

BY MR. LUSK:

Q The Plaintiffs have asked witnesses all this week what their opinion was as to how many Blacks would be elected in 1972 if it is broken up in Dallas County into eighteen single-member districts. Now, I would like to ask you that same question. In your opinion, in single-member districts, in your opinion, how many Blacks would be elected in 1972, and, then that is the "A" part of it. And, then the "B" part is: Based on your experience in politics, and knowing the system in Dallas County, if they are run in the multi-member district countywide how many Blacks would be elected in 1972 in your opinion?

MR. RICHARDS: Just for the record, Your Honor, I would like to object to the question as being speculative.

JUDGE COLEMAN: As we have said before, we have allowed a good deal of crystal ball gazing and I don't see any reason why we should darken the courtroom now. Proceed.

B. E. - Clark

A If I can remember the question, Counsel.

Q The "A" part was single-member districts.

A The single-member districts, and please don't hold me to these figures, but it seems to me that the '70 census reflects that there are about 230,000 Negroes in Dallas County. And, again I don't want to be held to it, but I think on a single-member basis the average per single-member district would be seventy-five or seventy-six or seventy-seven thousand or something like that.

Q Or seventy-four.

A All the Blacks in Dallas County don't live on one block, and I am no expert in map drawing, but based on my knowledge of Dallas County and my knowledge of where Blacks live within the various precincts in Dallas County I doubt seriously that anyone could draw a single-member district map that could elect more than two Negroes to the State Legislature. Now, Part "B", just as we did in 1966 with Joe Lockridge and in '68 with Ian Holmes--

Q Excuse me. Now, on drawing that map you are talking about without especially gerrymandering?

A I would assume it would be a legal map, any map.

D. E. - Clark

Q Yes, sir. Pardon me.

A We are doing our best to support, if we are allowed to have multi-member legislative districts, three Black candidates for the legislature and one Mexican-American candidate. And, overall, I feel very strongly that if you look at what is best for all the people of Dallas County, both individually as Mexican-Americans and individually as Negroes and individually as Whites, it is clearly in everybody's best interest that we maintain multi-member districts. I think we have enough of pitting the Black against White, Black against Mexican-American. And, I think single-member districts, insofar as the way politics affects a community, will have a segregating effect rather than a cohesive effect. And, I am proud of our city, proud we have not had riots and other turmoil that other communities in this nation have had. And, I think that contributing factor for this is the reason that in our community people of various religions and races and economic status pull together.

E. E. - Clark

Q In your opinion, assuming that the Democrats are successful in '72, in your opinion will there be three Blacks and a Mexican-American elected?

A Well, Counsel, that is awfully speculative. I would say I want to support three Blacks and a Mexican-American, but I don't win all my races. If I win them all there will be.

Q Based on single-member districts, at least talking about races voting, would there be any way that the Mexican-Americans could elect anybody to a single-member district?

A They are flat out in the cold.

Q Well, Mr. Clark, how do organizations, political organizations, decide whom they will support in a primary election based on your experience in Dallas County?

A Speaking of the organizations that I am familiar with, first of all, you have a filing deadline. And, our party always strives to present to the people qualified candidates. And, if you don't get them to file before the filing deadlines you don't have any candidates. And, the first step is to see that your party proposes for election a qualified man in each place in the legislative races. And, then secondly,

D. E. - Clark

after the filing deadline and you have got -- printed a program and you know who all the players are then you go down the list and see who you think the best qualified are. And, we try -- we are not always successful -- but we always try -- in the committee -- to put together a slate of these people that we think are most qualified and run them together. And, frankly one of the reasons we do that is for economic reasons -- it is expensive. And, man, we can't raise any kind -- anything like the kind of money I have heard the Republicans talking about in this case.

Q All right. Mr. Clark, I am going to ask you in another field, sir, if you are familiar with the University of Texas at Dallas?

A Somewhat.

Q I believe it does not have the freshman and sophomore years of college at that university, is that correct?

A That is my understanding.

Q Now, putting this question in perspective. First, Dallas County has single-member senatorial districts, does it not?

A Yes, it does. There has been some testimony in the record that if the legislative districts

were broken down into single-member districts that they would bind themselves together for such problems that were of interest to the whole county, such as the University of Texas At San Antonio. Now, with that same question as to the University of Texas at Dallas, and talking about the senate as distinguished from the House, the senate being in the single-member districts that you have told us about, was there any senator outside the district in Dallas County where the University of Texas at Dallas was located who for reasons sufficient to the senator refused to support in the last session of the legislature the adding of those two additional first two grades to the University of Texas at Dallas?

A It is my understanding, yes.

Q Mr. Clark, you have told us that Dallas County has some roughly 230,000 or 230,000 Blacks. I want to ask you-- again in rough figures-- it is your understanding that Harris County has roughly 325,000 Blacks.

A That is what I have been told. Certainly, they have more than Dallas does.

Q All right. Now, again, putting this question into perspective, we have been told that if

the county is broken down into something less than county-wide districts, or single-member districts, that we would elect more Blacks in Dallas County. With respect to Harris County, that has roughly fifty per cent more Blacks than Dallas County, it was broken down into less than single-member districts the last time the legislature was redistricted, was it not?

A Less than multi.

Q Less.

A My understanding is they were running congressional districts.

Q Multi-member but in congressional districts less than countywide.

A Right.

Q All right. And Harris County, after it was broken down into less than countywide districts, how many Blacks did they elect?

A It is my understanding that they just had one, Representative Grusen.

Q One out of nineteen?

A I believe that is right.

Q And, Dallas County, with 180,000 fewer Blacks and multi-member districts, elected that many, didn't they?

B. E. - Clark

A Yes, sir.

Q Mr. Clark, in Plaintiffs' Exhibit 58-- I am going to hand you to examine Plaintiffs' Exhibit Number 58, being a package of correspondence which, I believe, has been identified in this record which the Attorney General received-- or the Board-- during the redistricting hearings of the Board, and ask you to look at the attached second letter in the stack and tell us what that attachment to that second letter is.

RE - Clark

BY MR. LUNA:

A Counselor, I don't think I have found it here.

(DEFENDANT'S NOTE: Counsel indicates to the witness.)

Q What is the---?

A This is a letter on the letterhead of the Democratic Party of Dallas County signed by Earl Luna, County Chairman, transmitting to Attorney General Crawford Martin a resolution adopted by the Dallas County Democratic Executive Committee, favoring the retention of multimember legislative districts.

Q So, is the Dallas County Executive Committee composed of elected precinct chairmen in every precinct in Dallas County?

A Yes, sir.

Q And these are elected from areas of 3,000 or four voters, are they not?

A Substantially.

Q Now, Mr. Clark, we have some 43 or 45 black precincts in Dallas County, do we not?

A Yes, sir.

Q And aren't you familiar -- and approximately 43 or 45 black precinct chairmen?

A Correct.

Q And, although at an Executive Committee meeting you seldom ever have everybody in attendance, but on the occasion that that resolution was adopted are you aware how many votes were against it?

A It is my information that Willie Simons---.

MR. RICHARDS: Excuse me. Objection until we find out or at least I have the witness on voir dire to see if he was there.

THE WITNESS: I was not there.

MR. RICHARDS: Objection.

JUDGE GOLDBERG: How would he know, Mr. Luna, what the vote was?

Does the resolution record the negative votes and the affirmative votes?

MR. LUNA: No, sir, it does not, Your Honor, but I think he has had an opportunity to be familiar with party records and information.

MR. CUNNINGHAM: We would further object that it is not attached as one of the exhibits -- as an exhibit. Now, if Mr. Luna

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wants to testify, then he can take the stand.

JUDGE GUARINO: You want this witness to testify as to the voted against it at the meeting, when he wasn't there, based on what someone told him? Is that what this is all about?

MR. LUNA: I think this witness is relatively active in the Democratic Party and is generally familiar with the affairs and the records.

JUDGE GUARINO: Well, instead of taking up all this time, if you were at the meeting — let's move on. Let's get it in in the legal way.

MR. LUNA: All right.

JUDGE GUARINO: Let's proceed.

(PAUSE)

JUDGE GUARINO: You would take Mr. Luna's statement as to that happened, wouldn't you?

MR. RICHARDS: I have no idea. I never heard what happened.

MR. GUERRERO: And I would disagree because I have heard differently.

DH - Clark

MR. LUNA: We have been rather generous in not objecting to their hearsay, but I withdraw the question.

JUDGE GOLDBERG: Yes, I thought this would be a matter about which there would be very little disputation, but apparently we are getting disputation that we are getting in here nearly.

MR. CUNNINGHAM: If it will please the Court, Mr. Luna says it was unanimous. My understanding is that the---.

JUDGE GOLDBERG: Pardon me a minute. Mr. Luna, in order to shorten this, would you make a -- were you there?

MR. LUNA: Yes, sir.

JUDGE GOLDBERG: Would you make a statement and let's see if these gentlemen will agree to your statement.

MR. LUNA: There was at the time, Your Honor, that the vote was taken, there was one vote against the resolution from a black precinct chairman who had been appointed ten minutes before.

After the vote was taken, there was one

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white precinct chairman who came up and said that he would like to reconsider his vote and have his also recorded against it, so there were two.

JUDGE GUINN: Does anybody want to make any comment on what Mr. Luna had to say?

MR. CHAIRMAN: I have talked with several black precinct chairmen who said that, first of all, they did not even receive notice of the meeting, did not know it was going to be held, and that they were 100 percent against what Mr. Luna his talking about.

JUDGE GUINN: I suppose that this is of such monumental importance that we will just have to get at it another way, Mr. Luna. I was in hopes that we could agree on these things. I must say that I don't think that since Mr. Clark was not there that he could testify.

MR. LUNA: I'm not going to proceed with Mr. Clark. I will go another way.

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BY MR. LUNA:

Q Mr. Clark, although there has been testimony here that the Republicans cannot fund races for the Legislature, I want to ask you whether or not they funded a race for County Sheriff county-wide last year in 1970.

A They had a candidate for Sheriff in 1970, and he ran a very fine campaign which cost somebody some money. I can't testify as to who paid it. The Republicans had a candidate and a good one and well financed.

Q For ten years did they successfully run and finance and elect a Republican candidate county-wide to Congress?

A Yes, sir.

Q And then--.

MR. LUNA: That's all, Your Honor.

Pass the witness.

JUDGE GOLDBERG: Thank you.

Cross-examination?

MR. CURRY: May it please the Court?

JUDGE GOLDBERG: Yes, sir.

MR. CURRY: May I direct a question or two to Mr. Clark?

JUDGE GOLDBERG: Surely.

MR. CURRY: Al Curry, representing the

State.

CROSS-EXAMINATION

BY MR. CURRY:

Q Mr. Clark, I believe you identified earlier in your testimony a Mr. S. H. -- excuse me---.

A S. H. Wright.

Q ---S. H. Wright. Mr. Wright, I believe, was appointed to a State Board by Governor Connally. Is that correct?

A I believe that is correct.

Q I believe he was a block from Dallas. Is that correct?

A Correct.

Q Did he serve?

A No.

Q Do you have knowledge why he did not serve?

A I understand under the rules of the Senate that if a Senator from the district from which a proposed appointee objects, that the Governor either withdraws the

nomination, or the fellow politely steps aside, and that is what happened in this case.

Q Who was the Senator?

A Rev. Wright lived in Senator Oscar Mauzy's senate district, I think.

Q Did he exercise that privilege, Senator Mauzy?

A I don't know that of my own knowledge. I just know what happened.

MR. CURRY: Thank you.

JUDGE JUSTICE: Is there cross-examination?

MR. RICHARDS: Just one moment, Your Honor.

(REPORTER'S NOTE: Counsel here confer out of the hearing of the court reporter.)

MR. RICHARDS: No cross, Your Honor.

JUDGE GOLDBERG: I didn't hear you.

MR. RICHARDS: No cross, Your Honor.

JUDGE GOLDBERG: Does that conclude the testimony of all the combatants?

MR. LUNA: That concludes the witnesses that I had, Your Honor.

JUDGE GILBERTO: Do you have anything, Mr. Curry? 857

You are going to read from some depositions or summarize them?

MR. CURRY: Yes, sir, summarize -- we have no live witnesses, Your Honor.

Excuse me, Your Honor. I was informed, and I may have spoken out of turn. Mr. Natonial was here earlier, and I believe he indicated to me that he did have a witness.

JUDGE GILBERTO: Could we find him out in the hall? Do we know where he is?

MR. CURRY: I will locate him.

JUDGE GILBERTO: Thank you very much.

I would like to get through with the live witnesses, and then we can take up the other.

MR. CURRY: Yes, sir.

MR. RICHARDS: We still have a few minor matters, not live witnesses, but matters of exhibits--.

JUDGE GILBERTO: Oh, yes.

MR. RICHARDS: --and interrogatories that were never responded to, and the 48 hours have long since expired that I would like to get clarification on from the state.

JUDGE GOLDBERG: If we can just get all our live witnesses, our depositions, and then we will tidy it up with a nice little bow.

MR. McDANIEL: Your Honor, I have one other live witness. He is not on the list. I have spoken to both attorneys involved in the Bexar County situation. Putting him on is all right with them. I intend to ask him five questions on direct, and they both, I am sure, will have some questions for him on cross.

JUDGE GOLDBERG: We will allow you six. Proceed.

MR. McDANIEL: Thank you, Your Honor.

We call Mr. Paul Silber.

These five include the questions of his name for the record, Your Honor.

PAUL SILBER, JR.,

a witness called by the Defendants, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DH - Silber

DIRECT EXAMINATION

BY MR. McDANIEL:

Q State your name, please.

A Paul George Silber, Jr.

Q Mr. Silber, are you a member of the Texas House elected from Bexar County?

A Yes, sir.

Q In your opinion is the Mexican-American in Bexar County denied effective participation in politics for races for the State Legislature---?

A No, sir.

Q ---by multimember districting?

A No, sir.

MR. McDANIEL: Now, Your Honor, there has been a lot of testimony along this. I don't contend that this is a legal question before the Court, but there has been so much---.

Q The next question, do you prefer multi-member districting or single member districting for Bexar County?

A I prefer multimember districting for Bexar County.

DR - Silber 960

Q Would you explain to the Court why you prefer multimember districting for Bexar County?

A Yes, sir. Bexar County comprises a single or generally a single community of interests. To create single member districts in Bexar County would fragment this community of interests into parochial districts. A short example of that is if we created single member districts in Bexar County, we would end up with three districts that would have predominantly the poverty areas would be included in that, the Welfare recipients, medical indigent. These areas would be black and two brown districts in all probability.

Their effective representation through responsible compromise would be impaired because of, I think, the general prevailing attitude of the people in non-poverty areas to Welfare, Welfare reform and such other activities.

Now, this is just an example of many types of problems that exist in Bexar County as a whole that could not be effectively represented when you fragment this community of interests into parochial districts.

In other words, a person from an affluent, wealthy district, his ability to compromise, to work with the problems of a poverty district will be greatly impaired.

MR. Nathaniel: Thank you, Your Honor.

JUDGE WOOD: Mr. Silber, I believe you are an engineer by profession, are you not?

THE WITNESS: Yes, sir.

JUDGE WOOD: I saw in the morning paper, I believe the Express here in Austin this morning, where you had, in the event that this Court should hold multimember district procedures invalid or unconstitutional, that you had drawn a map or a plat of Bexar County. Is that true?

THE WITNESS: That is true, sir.

JUDGE WOOD: All right.

MR. EASON: Nathan Eason from San Antonio.

CROSS-EXAMINATION

BY MR. EASON:

Q Mr. Silber, in other words, your position is, as I understand it, that your delegation from San Antonio would be more effective on a multimember slate, as it is now?

A Yes, sir. The minority would have much more effective representation.

Q How many Mexican-Americans do you have in your Bexar County delegation?

A The present delegation has one.

Q And do you have any Negroes?

A No, sir.

Q Do you have any Republicans?

A No, sir.

Q In your experience with politics do you know of any Negroes who have ever been elected from Bexar County to the State Legislature?

A I don't know, sir.

Q Well, do you know of any?

A I don't know.

Q Do you know of any Republicans that have ever been elected on the Republican ticket to the State Legislature from Bexar County?

A Did you say on the Republican ticket?

Q Yes, sir.

A I don't recall. I don't know.

Q Mr. Silber, do you have an opinion as to how many Negroes could be elected from Bexar County, if it were divided into single member districts?

A Yes, sir.

Q What is that opinion?

A One.

Q Do you have an opinion as to how many Mexican-Americans could be elected from Bexar County on a single member district plan?

A Two.

Q Two?

A Two.

Q Do you have an opinion as to how many Republicans could be elected from Bexar County on a single member district plan?

A Depending on the plan, from three to zero.

Q From three to zero, all right, but at this time there is one Mexican-American, no Negroes, and no Republicans?

A That's correct.

Q Do you know -- what in your mind would be a comparison of the population of Bexar County as between so-called Anglos and Mexican-Americans?

A I would guess about 40 percent.

Q Forty percent what?

A Mexican-Americans.

Q And what percent Anglos?

A Oh, probably about 50 percent.

Q And the balance or the ten would be Negroes

CR - Silber 964

and other minorities. Is that right?

A And that's just my guess.

Q Yes, sir, but in any event, we have one Mexican-American representative in the State Legislature from San Antonio with under your premise 40 percent of the population?

A Well, the Mexican-Americans are represented by ten representatives from Bexar County, not just one Mexican-American representative.

Q Yes, sir, I understand that, but, if you would, please, answer the question.

With 40 percent by your understanding of the percentage of the population, they do have one Mexican-American surnamed representative in the State Government?

A There is one Mexican-American surnamed.

Q Representative Silber, have you had occasion to become acquainted with District 21, Senatorial District 21, which incorporates the northeast portion of San Antonio with the lower part of Texas, specifically, Starr, Jim Hogg, Duval and Zapata Counties?

A Yes, sir.

Q Do you have an opinion concerning the compactness of this district?

A I wouldn't think it was compact.

CH - Silber

Q Would it be more compact if they had gone -- assuming, I believe we have about 118,000 population in Bexar County over and above the two senatorial districts which are contained entirely within the county. Is this correct?

A That is correct.

Q Would it have been more compact had they gone -- assuming they were going to incorporate it with the lower part of Texas, if they had come into the southern part of Bexar County?

A It is possible that it could be more compact.

(No omission here.)

D.E. - Silber 966

Q Do you have an opinion concerning the community of interest between Alamo Heights, Terrell Hills and northeastern San Antonio and Bexar County with Jim Hogg, Duval, Zapta and Starr Counties?

A Well, this particular district fragments the community of interest in Bexar County that I previously testified about, because there is a community of interest between the people in Terrell Hills and the people in southern Bexar County and central Bexar County and all over Bexar County that does not exist between it and the southern counties of this State.

Q Well, do I take it from your answer then that you feel that there is not a community of interest between the people of the top portion of this district, 21, and the southern part of the district?

A That's correct.

MR. MASON: I believe that's all.

JUDGE WOOD: Mr. Silber, with reference to the plan that you proposed and that you prepared, would that plan, in your opinion, tend to elect a Republican?

A It would give the Republicans the opportunity to be elected, but the plan would not tend to elect one. In other words, it balanced the communities of interest

and gave opportunities for election.

JUDGE WOOD: Thank you very much.

CROSS EXAMINATION

Questions by Mr. Idar:

Q Mr. Silber, I am Ed Idar and I represent what has been known as the Bernal Intervenors in the Tyler case also. You are a State Representative from San Antonio, I understand?

A Yes, sir.

Q How long have you served in the Legislature?

A This is my first session, Sixty-Second session of the Legislature.

Q Do you know John Ramsvidez, District Judge down there in Bexar County?

A Yes, sir.

Q He has been elected county-wide, has he not?

A Yes, sir.

Q And he is a Mexican-American?

A Yes, sir.

Q You have indicated that in your opinion if

D. E. - Silber

we were to have single member districts for Bexar County, and that as a result of that, we might have say three Mexican-Americans, for example, and perhaps one black, that they might not be able to work with the rest of the delegation? Is that the proport of your testimony?

A No, sir.

Q Well, would you please restate it for me? I was out of the room when you started in.

A I say if we fragment Bexar County, the community of interest, and to parochial districts, that the parochial interest of each district will impair the responsible compromise or the ability to responsibly compromise and it would not necessarily fall on the Mexican-American being moreso than on the Anglo of another district. The fact that they look to "he is my Representative and I have a definite opinion on this Legislation and I want him to vote my way", ties his hands. But while in Bexar County as a whole, there is much more latitude for understanding with your voters, where he gets elected county-wide, that he has to represent all of the people of the County, therefore we can tolerate this mild indiscretion in his voting record.

Q Does it boil down to the quality for the

representation from each of those single member districts?

A No, sir. I think it boils down to the parochial nature of each of the districts, whether compromise can be obtained.

Q Well, isn't the reverse necessarily also true that in a multi-member situation, particularly where you have a major area in a city that has lacked representation for a long time? And because of the factors of money, cost of campaigning and so forth, that the people that reside within those areas, the neglected areas, the slum areas, have not been able to get their interest adequately represented?

A That is what I have testified to; that I feel that a multi-member district more adequately gives them representation than a single member district. Because of their problem to the community as a whole, they will have effective representation. Yes, a single member district would elect a person from that district to represent them. But his representative effectiveness would be impaired, compared to one that is representing -- elected county-wide. For instance, if Bexar County --

Q -- All right. I believe you answered what I asked you, but my question is, isn't the effectiveness

C.E. - Silber

of a multi-member delegation as it relates to the problem of the people in the slum area, also inhibited by the other pressures that are upon him from the rest of the community -- necessarily pressures that are even stronger than those exerted from the slum areas?

A From the voting of a delegation as a whole from Bexar County, there would be, in my opinion, there would be more votes for legislation to effect or to assist minority groups or these property areas or these districts by voting with a delegation as a whole than it would be if single member districts. In other words, the effectiveness of the delegation -- how many votes can you put on one side would be greatly enhanced in multi-member district.

Q I am going to refer, Mr. Silber, to Plaintiff's Exhibit BI-2 that is before this Court. It is, as you can see, a map of the City of San Antonio. It doesn't contain the entire county. Now, is it true or not that some of the -- how can I classify -- major State projects that have come into San Antonio by virtue of action by the Texas Legislature have included the University of Texas at San Antonio and the medical school and that has also brought into being a Bexar County Hospital, and that everyone of those facilities have been located in the northwest portion of the City? Is that

correct?

A That is correct.

Q Do you have any idea how many millions of dollars that is going to represent in way of capital improvements to that portion of the City?

A There are several million dollars. The City is growing in the northeast direction and the Board of Regents located those schools there, not the Legislature.

Q But the Legislature appropriated the money?

A The Legislature appropriated the money to locate the school in Bexar County and divorced themselves from the location of where the school would be in Bexar County. They left it to the Board of Regents to locate all of those facilities in the best interests of them.

Q All right. And who appointed the Board of Regents?

A The Governor.

Q And what influence does the Legislature have on the appointment of the Governor, opposed to the Board of Regents?

A To my personal knowledge, little or none.

Q You mean the people from the Senate have no influence on the actions of the Governor --

A -- I can't speak for the Senate.

Q But the point is, can you tell me where we have any major installations or improvements that have been constructed in any other part of the City of San Antonio that relates to the west or the east or the south side, by virtue of the result of the actions by the Texas Legislature, whether directly or indirectly?

A Yes, sir. For instance, if we take Bexar County through a span of time, when the growth of Bexar County was to the south of the City, we had the State Hospital, which was on the south side of town --

Q -- well, how many years ago are we talking about at that point?

A Well, what I am trying to answer your question is, is that where facilities are located are within the growth pattern of a community. They do not necessarily determine the growth pattern of the community. In other words, I would assume that the Board of Regents located the University where they did, because that's where they figured the most of the students would be. That is where the Mexican-American growth is, toward the northwest, and that is where the Anglo growth is, toward the

northwest.

Q You haven't answered my question. What about the southern portion of the City?

A Well, the growth isn't toward the southern portion. When it was, they had facilities located there.

Q Well, suppose we have located some of these installations in the southern portion of the City. Wouldn't that have a tendency to encourage the growth and the development of that portion of the City?

A Well, if that is the purpose of these facilities, yes, that would have encouraged growth, but it would be false encouragement.

Q In your opinion?

A All of this is my opinion.

Q All right. Do you know whether or not Senator Bernal had any input in the legislature that related to the University of Texas Medical School and the University of Texas at San Antonio?

A I would assume he had a lot of input into it.

Q In fact, he was the Senate sponsor, wasn't he, of that legislation?

A I believe so.

Q Would you agree with me that Senator Bernal has become a fairly outspoken Mexican-American leader in San Antonio?

A I think he is probably the most outspoken leader, and he doesn't live in a Mexican-American district.

Q Right. But he does speak out for these people?

A That's right. And he doesn't live there.

Q And he has spoken out on issues involving the migrant farm worker? Is that correct?

A I believe he has spoken out on most issues for Mexican-Americans.

Q All right.

A And other people in Bexar County, as a matter of fact.

Q And he is possibly one of the only legislative delegation, whether it be the house or the Senate, that has done so, is he not?

A I don't know whether that is correct or not.

Q Well, have you, for example, ever spoken out on behalf of the migrant farm worker?

Cross - Silber

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A I have not spoken out on behalf of the migrant farm worker, per se, no, sir.

Q Or any other issue that is related directly to the needs of the Mexican-American population?

A I have spoken out on educational problems --

Q Oh, I suppose you are now concerned about financing our State educational situation by virtue of the recent Court decision?

A I was more concerned with Edgewood 20 years ago when very few people knew it was a district, and whom it wasn't predominantly a Mexican-American district -- their problems. In other words, I am aware of the problems in Bexar County and I speak out for them, but different people have different expertise and effectiveness, and working as a delegation, we are able to do this for a community of interest as a team.

Q Well, do you think that Senator Bernal being an outspoken Mexican-American leader, has been unable to act as a member of the team and to push for the interests of the rest of the community?

A Certainly not.

Q In fact, he has been effective both ways, has he not?

A That's right.

Q Can you cite me another member of your delegation that has been as effective in both aspects; both for the community as a whole, as well as for the people say like in Bernal's case, the people from the ethnic background that he comes from?

A Well, when you consider that one Senator is worth five representatives, as far as population representation, I would -- I feel that I should be able to name five. I think that is very difficult to compare the effectiveness of Senator Bernal against anyone, because at any one point in time, when we only have two Senators, and 50 percent of them -- or Senator Bernal is Mexican-American, it sort of falls that his role is to advocate for the Mexican-Americans and he, I would say, also doesn't desire to be preempted in this role.

Q I am not seeking to preempt him; I am trying to establish the fact and see if you will agree with me --

A -- I would say this --

Q -- that the people in these slum areas, your Mexican-Americans and your Blacks, have certain needs that the Legislature must respond to, that the quality of representation under either single or multi-member

districts, to a large extent, has been inhibited in the expression in the Legislature of the needs of these people?

A That is not true.

Q I am further trying to see if you will agree with me that depending upon the man involved, whether he comes out of a multi-member district or a single member district, he may look at the overall interest of the community, as well as the specific interests of one area that he may be particularly concerned with and do a good job both ways, like Senator Joe Bernal?

A If Senator Bernal had to run in a Legislative size district, he could not be the Senator that we know him today.

Q Could he be the Senator we know him today if, in effect, his single member Senatorial district was not predominantly Mexican-American?

A When he first got elected, I believe it wasn't predominantly Mexican-American. In other words --

Q -- he has been reelected from that District now for once or twice, has he not?

A This is, I believe so.

Q Let me ask you this: what about Senator Kothmann? Has he been quite as outspoken as Senator Bernal

has been on issues that relate to the Mexican-Americans?

A No, sir. He has not been outspoken on many issues. However, he has been very outspoken on another issue; Mitchell Lake. For instance, that issue of the pollution or of the alleged pollution of that area of Bexar County, which is a small segment of Bexar County, a very few people -- the Bexar Delegation, because of the community of interest, and because of the fact it is a multi-member district, could speak to this particular problem, facing the total opposition of the City, itself, who owns this particular sewage disposal lake.

Q Of course, Mitchell Lake has been an issue in San Antonio for a considerable length of time, and sentiment on the part of the City Council has finally turned around to where they are finally ready to do something about that.

A After the legislature this time finally passed two bills on it.

Q That's right. But it took Legislative action to do that, because of the action on the part of the City Council? In other words, the mere passage of legislation is not enough?

A I wouldn't say is not enough. It can be enough. Depending upon what type of legislation it

in.

Q In the case of Mitchell Lake.

A It was cooperative legislation.

JUDGE GOLDSMITH: We are getting into kind of deep water now, Mr. Idar.

(Laughter).

MR. IDAR: All right. I wouldn't call it deep, Your Honor.

JUDGE GOLDSMITH: Maybe it is too shallow, then.

C. E. - Silber

Questions by Mr. Idar:

Q At any rate, it is your opinion that single-member districting would, in effect, crystallize your delegation or fragmatize it? I have forgotten exactly what the word is you used, but is that your opinion?

A That is my opinion.

Q And, you have no expertise, you are not a political scientist, and you don't base it on any study you have made?

A I base it on political experience, not science.

Q One term in the legislature?

A One countywide election trying to get elected as an unknown where you have to reach in the west side, the south side, the Black district and all over-- and in a runoff election.

Q Where do you reside?

A I live in the northeast part of San Antonio.

Q I wonder if you could step down and just point to it on the map?

A It is in 1204, in census tract 1204.

C. E. - Silber

Q Terrell Hills, somewhere in that area?

A Right here. (Pointing)

MR. IDAR: I believe that is all.

MR. McDANIEL: I have a few questions on redirect, Your Honor.

JUDGE GOLDBERG: All right.

REDIRECT EXAMINATION

Questions by Mr. McDaniel:

Q Mr. Silber, do you have an opinion why there are no Mexican-Americans in the present legislative delegation from Bexar County?

A Yes, sir.

Q What is it?

A Because of the incumbency of the present representatives-- there hasn't been a great turnover in representation in Bexar County.

Q Do you feel that this is because they do represent the interests of the Mexican-American community effectively?

A Yes, because when they haven't there has been more Mexican-Americans on the delegation.

Q All right. And, am I correct in construing your discussion with Mr. Kazen, has it been

your opinion that there has been no way to include 110,000 of Bexar County with a community of interest with Starr, Jim Hogg and Zapata County?

A Not apparently.

Q Is it fair to say that in your opinion the one man-one vote principle creates in this instance less effective representation?

A Yes, sir.

Q Would you explain to the Court what you mean by that?

A Well, for instance, the people in Terrell Hills and Alamo Heights who are tied in a senatorial district that goes all the way to the border have a community of interest with the people in San Antonio; that is where the business is and that is where their homes are, their schools and the like and they are economic. They are part of the Bexar County community of interest, not a part of Laredo's or the agricultural areas around San Antonio. Now, they would be, in my opinion, better off-- at least I would rather have diluted representation and have some representation that was direct to me than to call the senator from Bexar County, Senator Bernal or Senator Kothmann, and they say "Well, you are not in my district, you have to

go to Laredo or some other place to talk to your senator.

Q And, yes, in fact, are not in their district, are you?

A I am not in their district.

Q You are in Senator Connally's district, District 21?

A Right.

Q All right.

MR. McDANIEL: Thank you, Your Honor.

JUDGE GOLDBERG: Anyone else?

MR. GEE: Yes, sir.

CROSS EXAMINATION

Questions by Mr. Gee:

Q Mr. Silber, I don't think we have ever met in person before but we have corresponded, as you will recall. I would like to ask you this, sir: Are you familiar with what portion of Bexar County was combined with LaSalle and Zapata County and so forth?

A Generally speaking, yes, sir.

Q Well, it amounts to about 110,000 people, more or less, who constitute the core of the Republican voters in San Antonio.

A Yes, sir.

C. E. - Silber

Q Do you think that was just a coincidence, Mr. Silber?

A Well, nothing is coincidental. There are many reasons that I could speculate why it occurred. And, you have two senatorial districts that don't want them.

Q Well, Mr. Silber, one last question. From our prior associations I believe you to be an honest and candid man; you have been venturing opinions this morning, so please tell the Court whether in your opinion that is not an outright political gerrymander.

A I think it is a gerrymander.

MR. GEE: Thank you.

JUDGE GOLDBERG: Any further questions?

MR. McDANIEL: I would like to ask one in light of that last question.

REDIRECT EXAMINATION

Questions by Mr. McDaniel:

Q Would there be any more community of interest between Jim Hogg and Zapata counties, for example, with 110,000 citizens, out of somewhere else in San Antonio?

A No, sir.

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MR. McDANIEL: Thank you, Your Honor.

JUDGE JUSTICE: I have two or three questions.

QUESTIONS BY JUDGE JUSTICE:

Q Mr. Silber?

A Yes, sir.

Q We have had some testimony in this trial about some rather appalling conditions of poverty in the so-called barrio section of San Antonio. Can you detail to me any specific legislation which was proposed by any member of the House delegation which would alleviate some of these conditions? And, I refer specifically to such things as bilingual education or adult education or to try to improve the quality of the English, say, for the members of that area or health care centers or some type of welfare legislation that applies specifically to this area.

A I don't know the origin of this legislation on such notice, as to who the authors were, but there were several bills on bilingual education.

Q Were any of them proposed by members of the House delegation from Bexar County?

A I don't recall that there were, sir.

Q Was there any legislation proposed by

any of the House members from San Antonio that related to welfare spending or anything of that nature?

A Well, I think some of the House members were co-authors of the constitutional amendment to raise the ceiling on welfare, which was supported by the Bexar County delegation.

Q Do you know what the vote was, I mean, as between the members of the Bexar County delegation? How did the vote stand on that particular issue?

A I think the majority, not unanimously, but I could not-- I would have to go to the record.

Q Was there any legislation which was introduced by any member of the House delegation which dealt specifically with the health care of this particular group in San Antonio?

A No, sir.

JUDGE JUSTICE: I have no further questions.

JUDGE GOLDBERG: Mr. Eason, did you--

MR. EASON: No, sir, Judge Justice covered it.

JUDGE GOLDBERG: Anyone else? Everyone has spoken his piece?

MR. MC DANIEL: I have one other piece of evidence I would like to offer at this stage of this case, Your Honor. It is not a live witness, it is a stipulation which has been edited a little and added to by Mr. Idar, which is fine with me, and it has been signed and agreed to by myself, Mr. Idar and Mr. Mann. I would like to read it to the Court, if I may. 887

JUDGE COLEMAN: Proceed.

MR. MC DANIEL: I think perhaps this does bear on the issues before the Court directly. Leaving off the formal parts, one, that for the 59th Texas Legislature, 1965 -- 1966, Bexar County was a multi-member district for the election of seven representatives at large to the Texas House of Representatives; that the Representatives elected from Bexar County to the 59th Texas Legislature, 1965 -- 1966, were R. L. Vale, John C. Alamia, Joe J. Bernal, Red Berry, John Johnson, Glen Cothran and Tom Lee. John C. Alamia and Joe J. Bernal are Mexican-Americans, and R. L. Vale is of a mixed parentage with his father being Anglo-American and his mother Mexican-American; John Johnson and Glen Cothran were both Anglo-Americans, that Tom Lee

is a Chinese-American. That for the --

SENATOR MAUEY: How about Red Berry?

MR. MC DANIEL: I left out Red Berry, I am sorry. He is dead, but he was Anglo-American also. For the 62nd Texas Legislature, 1971 -- 1972, that of the ten members of Bexar County there are nine Anglo-Americans and the 10th is R. L. Valo. And, further in the same Legislature Joe J. Bernal is serving as State Senator. My point being that in the 59th State Legislature the swing vote on the Bexar County delegation was a Chinaman. Thank you, Your Honor.

JUDGE GOLDBERG: Are you trying to make our puzzle Chinese? Now, does that complete all of the testimony?

MR. IDAR: Is the State resting at this time, Your Honor?

JUDGE GOLDBERG: I asked if there was any further testimony?

MR. IDAR: We do have one witness in rebuttal whenever they rest their case.

MR. CURRY: I have a summary of the deposition.

JUDGE GOLDBERG: He is going to read from

the deposition. Do you want to put on your witness after the deposition has been read — or examined?

MR. ZIMM: Well, I think I would, yes, sir, Your Honor.

JUDGE COLEMAN: All right. Proceed, then, Mr. Curry. Do you have something?

MR. ZIMM: I just wanted to say, Your Honor, that for the Democratic Party we have rested. It is my understanding that all of the exhibits listed on the pretrial order and the amended pretrial order in the Tyler and Dallas cases, I presume, to be admitted and have been actually admitted.

JUDGE COLEMAN: We are going to, as I say, put it in all nice books and close and all that, but let's get all the testimony in — live or quasi live.

MR. CURRY: May it please the Court, Al Curry for the State. And, I am simply going to briefly, very briefly, summarize depositions that relate to this matter. First of all, in connection with the deposition of the Attorney General. His deposition will reflect that his staff — that he personally worked with his

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staff, that there were several staffs 990
required to work on preparing these plans,
including the Lieutenant Governor's staff
and the House staff as well as the Attorney
General's staff. And, as the record reflects,
there were several public meetings, that there
were discussions regarding Houston, Dallas and
Bexar. The decision in Houston was primarily
resolved as a result of the communications
from Houston and the request of the Houston
delegation on single member districts. That
in the course of this planning there was no
decision to the contrary as far as Dallas and
Bexar is concerned, but in fact they followed
the historical fact that there had not been
single member districts there before. There
was a distinction with Houston; Houston in the
prior apportionment act actually had something
less than at large election. It has three
districts from the county at which there were
several places within which the Representatives
ran at large. The primary guideline that he
testified to was the one man -- one vote; that
his staff was instructed and cognizant of the
requirements of the Constitution and the

pronouncements in the Chavis case. Each of the members of the board repeatedly stated that they did not instruct anyone or take into account color in determining these districts. The Attorney General stated that, frankly, as far as his personal philosophy was concerned he could go either way -- as far as his personal philosophy was concerned as far as single member or multi-member districts -- but in this instance they chose the multi-member districts for Dallas, Bexar and the other county. And, in his opinion it was fair and it did not discriminate and did not operate to discriminate and was not intended to do so. Mr. Calvert, a member of the board, testified in substance that one of his guidelines was that he wanted to do what the people wanted, and to a great degree he relied on the Attorney General and the Lieutenant Governor and their advice and counsel. He was very concerned that it be Constitutionally he was counseled and advised by the Attorney General that it was, and therefore he was agreeable to signing the act that was proposed and enacted by the board.

MR. CURRY: Bob Armstrong, a member 992
of the Redistricting Board, did testify, and his deposition is filed.

Mr. Hetscher testified that he had many plans, that there were public meetings, and, as far as the senatorial districts were concerned, in summary the Speaker of the House testified that traditionally and historically one House more or less let the business of the other House be somewhat guided and directed by that House, and, therefore, he did not to a great degree get involved at all in the Senate districting plans for Houston.

As far as the multimember districts are concerned, although he is one of the members of the Board that did not sign this Act, he states that his personal opinion is that multimember districts are preferable, and he strongly feels that way, although in this instance he did not approve this particular Act.

The staff, Greg Noonier and Bob Spellings from the Lt. Governor's Office, depositions are on file. Mark Fisher from the Legislative Council's Office deposition is on file. They will show that each of these

gentlemen were involved in the work over the years in the respective Houses in preparing legislative redistricting and that they had worked on these jigsaw puzzles and put many of them together, and they finally got down to the one that they thought that everybody accepted. 993

I would at this time call the attention of the Court that Barbara Jordan -- Senator Barbara Jordan of Houston, her deposition was concluded yesterday morning in line with the agreement of the parties, and I have the original, which was returned to me for filing.

I would like to call the Court's attention very briefly to a portion of that deposition.

First of all, I would direct the Court's attention to the single member district of the House -- the deposition will reflect that this was prepared by Bill Young, the young man who was our associate counsel in the case and who took the deposition, and he just simply said that he used the census reports to follow the color scheme that he prepared, which showed yellow being 34 to 50 percent black

population within the census tract, blue being 51 percent to 75 percent black population within the census tract, red being 76 to 100 percent population black within the census tract.

For the purpose of the record I would call the Court's attention to the fact that this exhibit, as other exhibits that each of us has prepared, the Plaintiffs reserve the objection as to its accuracy. They assume that what is represented by Counsel is accurate, but it is what the census reports reflect that should control, but with that objection the exhibit was used.

In this connection, may it please the Court, Senator Jordan who is a black senator from Harris County, testified that in her opinion, examining this, that in her opinion there were five what she termed safe black districts from which a black could be elected.

She also testified that in her opinion there were two additional districts, which in her opinion were possible districts, from which a black could be elected.

In connection with Senatorial District 11, which is the one primarily in dispute in

Harris County, she was asked by her attorney -- or by Mr. Mallin, rather than her attorney -- whether or not the new districting plan destroyed any possibility of a black being elected from that district. 935

Her testimony was, "I do not concede that I could not be elected from the new district. It would be difficult for an unknown person, but I believe that I would be able to direct my appeal to the citizens of that district."

In addition, the deposition of Searcy Bracewell was taken Monday morning by Mr. Bary in connection with this matter, and I would very briefly just read three short portions from this deposition.

He was asked, "Under the districts that were ultimately drawn and unless this suit otherwise affects them, would you say that there is more of an opportunity to elect at least two conservative Democrats to the State Senate from Harris County?"

Answer: "I would say under the present district that it would be possible for two conservative Democrats to be elected to the Senate, two liberals and one Republican, which

I think is a pretty fair cross section." 99b

He was asked to identify the parts of Northeast Houston as being a black area which he agreed, "has a pretty heavy black population. However, as I said, the black population has spread out more over the county in recent years."

Question: "In the senatorial district lines in Harris County, as you have presently drawn, do you have an opinion as to whether or not it would be possible for a black to be elected as a State Senator in any one of these new districts?"

Answer: "I would say it would be possible for one to be elected in any."

Question: "Specifically which district do you think it would be possible?"

Answer: "I think it would be possible in any of them if we would just -- we have just elected a black Councilman city-wide. We have elected two members of the School Board, black members of the School Board city-wide, both against whites. We have elected a Latin-American city-wide -- I mean school district-wide to the School Board. If that is any criteria,

and I think it is, a republic block could be 997
elected against a white in any one of the
districts."

That concludes our summary of the
depositions for the State, Your Honor.

JUDGE CHAMBERS: Mr. Idar, do you
have a---?

MR. IDAR: I would like to call Mr.
Mat Garcia, Your Honor.

MR. CHAMBERS: The State has
rested, Mr. Carry?

JUDGE JEWICK: Yes, it was so stated.

REBUTTAL TESTIMONY PRESENTED BY THE RENDAL INTERVENORS

MAT GARCIA,

a witness called by the Rendal Intervenors, having been first duly sworn and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. IDAR:

Q Will you state your name for the record?

A Mat Garcia.

Q And what do you do, Mr. Garcia?

A I am a practicing attorney.

Q And are you from San Antonio?

A Yes, I am.

Q How long have you practiced?

A Since 1951.

Q Were you born and raised in San Antonio?

A Born and raised.

Q What part of San Antonio were you raised in?

A In the southwest side, in the shadow of the stockyards.

Q Would that be within -- I am going to refer to Plaintiffs' Exhibit BI-2.

Is that within the area designated by an orange outline on this map (indicating)?

A Yes, it is.

Q And where did you go to law school?

A St. Mary's University.

Q Are you practicing by yourself or with a firm?

A We have a partnership, Garcia, Hernandez and Campos. We have two associates, Henry Beltran and Representative Robert Vale.

Q I don't know whether you had an opportunity -- some of the witnesses have sat in the courtroom and listened to the proceedings. I had hoped that you might have an opportunity to at least become familiar with some of the proceedings that went on yesterday, because our main object in putting you on the stand is to rebut some of the testimony adduced yesterday, but we will see how we may do.

Now, I understand that -- or do you know -- let me rephrase it. Do you know Judge Benavides?

A Yes, I do.

Q Testimony yesterday was adduced to the effect that he was first appointed to a district bench and thereafter he ran and got elected without opposition.

A That is correct.

Q Was that the only time that he ever ran for office?

A No, Judge Benavides ran in 1962.

Q For what?

DE - Garcia 1000

A Against Judge -- 1962 -- against Judge McCallum Burnett, who was Judge of the County Court-at-Law No. 1. He was defeated. That was a county-wide race.

Q Was that the only other time that he ran prior to his appointment to the district bench?

A Yes, I believe that that was.

Q All right.

A In 1964 he contemplated running again for one of the county benches, but he did not, it is my recollection.

Q Now, what about -- I believe it was N. P. Garcia, is it?

A Yes.

Q Is that his initials?

A Hipolito, H-i-p-o-l-i-t-o. We call him Hippo.

Q Do you know anything as to the way he managed to get himself elected?

A He was appointed to County County-at-Law No. 2 by the Commissioners Court when Judge Charles Grace, who was then Judge of County Court 2, was elevated to the position of County Judge by the Democratic Executive Committee. This was after the death of Judge Charles Anderson.

Q And did he thereafter run for that opposition as an incumbent?

A He has thereafter run without opposition on at least two occasions that I know of.

Q Now, the names of Jesse Gutierrez and Mike Hernandez also came up, I believe in connection with Precinct -- is it Precinct 1 in San Antonio?

A Precinct 1, that is correct.

Q Justice of the Peace?

A Yes.

Q Do you know anything as to the background of these two individuals?

A Yes, when Judge John Ogden left the bench, he retired. Johnnie Benavides and Jimmy Gutierrez ran for this bench, and Johnnie Benavides won. This was after Johnnie's defeat in the race against McCallum Burnett.

Then Gutierrez is now a Justice of the Peace. He subsequently ran and won, as I recall -- no. After Judge Bruce Brown was elevated from the J. P. Court to the Criminal Bench by appointment, Jimmy Gutierrez was appointed J. P., and he has subsequently run and been re-elected.

Q Now, we're talking mostly about situations where we had the single member type concept involved, in

contrast to a multimember type race county-wide, are we not?

A Yes. The J. P. Precinct 1 comprises a great portion of the area that is surrounded by the orange. A lot of the Mexican-American area -- and it goes all the way up into Alamo Heights, but the predominant make-up of this particular J. P. precinct is Mexican-American.

Q Other names that came up yesterday involved Dr. San Martin and Joe de la Garza, Jose Olivarez, Gilbert Garza, Leo Mendoza and Felix Trevino. I think most of these people were mentioned and testified to in connection with the City Council in San Antonio.

A Yes. I would categorize all these men as establishment Mexicans. If you would like to know what I mean, I would be glad to tell you.

Q I would be glad to have you tell the Court.

A In each instance I understand that reference had been made to a certain group of men in San Antonio who are politically wise and politically financially powerful. Now it is the Good Government League. Back then it had another name, and prior to then it had another name. The names change on, but on each occasion when they were forming a ticket, they would hand-pick a Mexicano, and each one of these men was hand-picked to run for the City Council

sometimes more than one, and I attribute their success in winning with all sincerity to the fact that they were running on a ticket, and they were able to get the vote of those areas of San Antonio that don't generally vote for the Mexicans, because of that fact, and, of course, their votes on the Council was always rather feeble.

Henry Gonzalez was an exception to this. Henry ran as an independent and won.

Q Do you know the record of Joe de la Garza on the Council when he served?

A Very fair.

Q In what connection do you say that?

A In connection, really, this was not someone that the Chicano community could communicate with. This was not someone that they would go to and feel, "This is someone who knows our problems."

Q Do you know whether or not those Chicano communities you are talking about, particularly through those people that you have termed establishment Mexicans, are they ever given a choice as to what Anglo-American candidates they are supposed to support?

A That's all out and dried. It is all decided. They are hand-picked. They are placed in certain positions. It is all decided beforehand. I will say

this. Mr.----.

MR. McDANIEL: I am going to object to this unless he has personal knowledge as to how these candidates are picked, and he obviously does not, if he is an outsider, looking in.

Q Are you acquainted with the efforts made by the Good Government League at recruiting candidates from the west side?

A Yes.

Q Do you know of any efforts in the process of that recruitment or in that recruitment process whereby those people are ever given a choice as to whether they will have a say-so in who is to be running on the north side?

A Would you mind restating that, Mr. Idar?

Q My question is, in the process of recruiting Mexican-American candidates on the west side, these people that we have talked about, de la Garza and the others, that are contacted by the -- shall I say the agents of the Good Government League, looking for Mexican-Americans to go on the slate. Are these people ever consulted as to who they would like to see from other parts of the city, particularly the Anglo-American community --

do they have an input in the recruitment of the Anglo candidate that is going to go on the GCL ticket?

A Well, first of all, the question as phrased, Mr. Idar, you say recruiting people from the west side. The only one of them who have been elected to the City Council who actually resides in the west side is Felix Trevino. The rest of them do not reside in the west side.

Q Let me rephrase it then. In recruiting Mexican-Americans generally--.

A Yes.

Q --whether they be from the west side or any other part of the city?

A Well, the make-up is in this manner. Your GCL has two organizations. One organization is what I have always referred to as the Anglo or the white GCL and then a subsidiary, which is made up of a group of men who have either -- who either have businesses on the west side or who have some ties on the west side who are Mexicanos. They have their meeting. The Anglo or the white GCL has their meeting. There is liaison between the two, and then a decision is made somewhere down the line.

Q So the two groups must together?

A I imagine ecstatic.

Q I mean officially for the purpose of slating candidates.

A To my knowledge they never meet to discuss decision-making.

Q There was some testimony yesterday as to the apathy, the fact that the Mexican-American in this area that we are talking about, the west side of San Antonio, that perhaps his problems were due to the fact that he just isn't participating fully in the political process.

Now, you were born and raised on the west side. Can you give us a brief idea as to what was the character of that area as you were growing up?

A The character of that area as I was growing up, Mr. Idar, was that the make-up primarily in the area of Durango, Sanders, Monterrey, Commerce, Travis, Houston -- all of these are streets that are within this area that run east and west -- that the make-up of that particular area of the town was a mixture of Mexicanos and Anglos, a scattering of blacks and an occasional Chinese.

As the years progressed, the Anglos began moving out of that community or that area of town to the north, northeast and northwest. It left that particular area of town almost 100 percent Chicano.

The reason for this I am also aware of,

having made a study. The people as they were progressing in their employment were able to better themselves, were seeking newer neighborhoods. F.H.A. financing was made available to whites, where it was not made available to Chicanos and blacks in these areas of town, because the contention was that if a move were made, which would result in an integrated situation, that they were justified in not extending financing, so, as a result, this area got to the condition that it is in now, and it is bad.

(No omission here.)

Q And that is so for the reason of the development of this City to the north and west?

A That's correct.

Q And the east?

A That is correct.

Q Are you familiar with the practice of restrictive covenants that was present at the time?

A Oh, yes.

Q To what extent was this an influence in the deterioration of that west side area?

A It was practiced almost consistently. It happened to new members of the G.G.L. when they tried to buy in Los Angeles Heights, which is north of this area and off of Blanco Road.

One particular man who is now a member of the G.G.L. presented cash money and I have personal knowledge of this transaction. And they told him that they couldn't sell to him because he was a Mexican and there were restrictive covenants. He now lives in Olmos Park.

Q Did the FHA go along with the restrictive covenant situation on passing on loans for financing homes in that portion of the City that we are talking about?

A Yes.

MR. HEAD: This is an exhibit that we are submitting in rebuttal, Your Honor. For that reason it was not listed in our list of exhibits. I would like to have the Clerk -- according to my records, it should be R.E.-20.

(Whereupon the Clerk marked Plaintiff's Exhibit RE-20 for identification).

Q Now, before we get into this, let me just button up one other thing I mentioned a minute ago. Some reference was made yesterday to the fact that you also ran for district Judge in Bexar County?

A That's correct.

Q And that there was certain factors that were not excited for your defeat. I wonder if you can tell the Court as to the two times that you ran for the District bench and the reasons that you chose to run and whatever might have been the outcome?

A The first occasion was in 1964. The reasons that I ran, it is not quite settled in my own mind why. I do know that at that time I was contacted by the then president of the San Antonio Bar Association, who told me that the Governor wanted to appoint a Mexican-American

to a district bench and he said that several of the lawyers had gotten together and they had recommended me to him as the best-qualified. And there were several meetings and several discussions and reports were coming to me almost weekly.

At that time we planned a vacation and I was asked to leave numbers and addresses where I could be contacted. And when I got back, still the discussion was taking place.

This was when John Connally was Governor and somewhere along the line I was not appointed. And the reason given was that he decided to appoint a man who had been his former roommate.

I decided at that time that I was going to run for the district bench and I ran against the then incumbent, Judge Dales Finch. Judge Finch had been appointed to the bench 16 years before. He had never had any opposition. He was a man approximately 70 years of age and there had been some indications that he might possibly retire.

I lost. Borrowing the words of the Reverend yesterday, who testified, Reverend Brown, in reverse, I did not receive the esteem and admiration of the majority of the voters. I got, I believe, 47 percent

of the vote.

Q All right. I wonder if you could proceed to your next race?

A The next race was in 1968. Judge Walter Lockridge retired from the 37th Court and my opponent was Richard Woods, and I lost by 1180 votes in that race.

Q Okay. Getting back to the line of questioning I was following, your testimony as to why this area has deteriorated, the west side area in San Antonio, you indicated part of it was the pattern where the Anglo-American was moving out into other parts of the city and the Mexican-American was restricted from moving in. And that part of the reason for that were those restrictions with certain restrictive covenants that were the widespread practice of the times. Now, it is my understanding that those covenants are no longer recognized; by action of the courts, the state is now forbidden-- the state courts are forbidden from enforcing them? Is that correct?

A That is correct, but I understand that there are still some deeds containing these restrictive covenants being used at this time.

Q Do you practice any amount of real title-- do you have any extensive real estate practice?

A Oh, yes. Yes.

Q Have you seen deeds in examining titles?

A No. Information came to me as late as last night and I just understand from information that came to me that they are still being used.

(REPORTER'S NOTE: Plaintiffs' Exhibit D-26 was handed to Mr. Curry for his examination)

Q. I am going to show you a document here. This is marked as Plaintiffs' Exhibit RD-26 and it is a certified copy obtained from the office of the County Clerk of Bexar County. I would like to have you describe that instrument to the Court and, in particular, read to the Court the type of restrictive covenant that we are talking about that is contained in that instrument.

A. This is a notice of restriction which is filed for record in the deed records of Bexar County and it is from Walter W. Mahlmeier, and wife, Leonore M. Mahlmeier, to the public. And it involves some two tracts of land, one involving a hundred acres more or less, and one involving a hundred and eighty-seven acres, more or less, located in Bexar County, which deed contains among other restrictions, the following:

"No lot, tract or subdivision thereof shall ever be sold, leased, devised or conveyed by deed, lease, gift or otherwise, to Mexicans, Negroes, or persons of either Latin-American or African descent, nor shall

any lot, tract or resubdivision thereof, ever be used or occupied by Mexicans, Negroes, or persons of either Latin American or African descent, except as household servants?

JUDGE WOOD: What is the date of that deed, Mr. Garcia?

A The date of that deed is December the 28th, 1949.

JUDGE WOOD: What is the relevance of this?

MR. IDAR: Your Honor, we are alleging that the Mexican-American, as a class of people, in the past in Texas have suffered from a number of customs, practices, traditions and so forth, some of it a de jure and some of them as de facto character and that all of this is relevant to establish our conditions under the Chavis case, and so on and so forth.

JUDGE GOLDBERG: All right. The testimony will be received and we will look at it through our usual judicial binoculars.

Q All right. One other fact I would like to establish: Can you identify the person who signed

that deed?

A The former mayor of the City of San Antonio.

Q How long was he mayor in San Antonio?

A Oh, about six years.

MR. IRAH: That is all, Your Honor. I assume that is admitted in evidence -- that exhibit?

JUDGE COLLINGS: With all of the reservations heretofore declared.

MR. IRAH: Thank you.

JUDGE COLLINGS: Now, has everybody rested -- all parties? If you haven't, stand up and say you haven't.

MR. RICHARDS: We have not rested. We have some items, exhibits still to put in; no live testimony.

JUDGE COLLINGS: All right. Now, let me make a suggestion. We will take a ten or fifteen minute recess, during which time I would ask you if you could get all of that information straightened up and then we could proceed to decide whether to go from there. We will give you fifteen minutes; five

more than usual.

MR. GARCIA: May I be excused, Judge?

JUDGE JUSTICE: Yes, you are excused.

(REPORTER'S NOTE: Whereupon there was a fifteen minute recess)

JUDGE GOLDBERG: Well, are we ready for the final minutia.

MR. RICHARDS: It is not physically minute, but --

JUDGE GOLDBERG: I said final minutia.

MR. RICHARDS: We do have several exhibits, Your Honor, we would like to make certain are part of the record.

JUDGE GOLDBERG: Proceed.

MR. RICHARDS: I have marked as exhibit CA-143, which is our style exhibit number, 93, which are certain minutes and programs of the Dallas City Council that are all, I think, well within our agreement of terms of copies of minutes out of the City Council records.

JUDGE JUSTICE: Is this listed in your final pre-trial order?

MR. RICHARDS: No, sir, it is not, because these are matters coming by way of rebuttal or we have now found out not in the record originally.

JUDGE GOLDBERG: Has everyone seen these?

MR. RICHARDS: I have tendered them Mr. Lowe just as I began, and I will do so in

the process. This is the only thing I think that there could be any question about. Exhibit Number 95 is perfectly by way of rebuttal; it is the resignation letter certified by the Secretary of State of S. M. Wright. Plaintiff's Exhibit Number 96, because we have been unable to ascertain whether it was indeed in the record or not, are the exhibits that were pre-offered during the course of Senator Mauzy's testimony to the Legislative Redistricting Board. We have been unable to determine if that was part of the record in this case and we want to be certain it is, so 96 is a compilation of matters that were tendered during the testimony of Senator Mauzy, to the Redistricting Board. Then, as we have promised, the Plaintiffs, as part of their case in chief, to produce at least what we considered to be a better plan showing the possibility of minimizing the deviations that exist in the present house plan. So, we have, then, pursuant to that an Exhibit 97, which is a legal description and summary deviations in 150 Legislative single member district plans

in the State of Texas. 1049

JUDGE GOLDBERG: You mean --

Let me get one thing straight, you are attacking all 150?

MR. RICHARDS: We are attacking the plan on the grounds of deviation.

JUDGE GOLDBERG: All 150 districts?

MR. RICHARDS: Well, we have attached the plans on the ground of deviation in the sense that we think that in order to show unjustified deviation, we have to show -- or we want to make as an element of our proof -- evidence that it is perfectly possible to draw a better plan, i.e., a plan with minimal deviation.

JUDGE WOOD: Are you attacking Lubbock, are you attacking Tarrant? There is no evidence in this record --

MR. RICHARDS: We are clearly attacking them, yes, sir, as it has been made clear all along. The last element we got into we did not propose to offer proof as to one aspect of our theory -- that is, the theory that came out from under Chavis in terms of discriminatory impact upon a minority, so we couldn't

organize a minority, so we couldn't organize and put in proof on some Counties, such as Travis, Tarrant and what-have-you. But, we clearly have attacked these districts on the grounds of deviation.

JUDGE GOLDBERG: On deviation?

MR. RICHARDS: And, we consider it to be simply part of our burden -- or at least we want to make it part of our burden -- the fact that a superior plan could indeed be drawn. And, that is tendered for that purpose; it is not tendered for the purpose of saying to the Court "We want to see you use this plan to cut up the State of Texas", but it is part of the determinates.

JUDGE GOLDBERG: Is that the house?

MR. RICHARDS: It is the house, and of course, we had the State cut up as our plans show. But, it is offered at this stage on an affirmative part of the case. Exhibit 98 is a State-wide map showing the Legislative Districts. Exhibit 99 are of four major cities we have shown individual number districts to minimize the deviation.

JUDGE GOLDBERG: Four cities?

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MR. RICHARDS: Tom. Dallas is 99, Bexar is 100 -- I am sorry, Counties, I should have said -- Tarrant is 101 and Harris is 102. And, we would offer these exhibits for the record. 1021

JUDGE SUAREZ: You say you are attacking this present plan on the basis of deviation? We have had no testimony to this effect, up until this point.

MR. RICHARDS: We are relying -- and this is one of the matters I want to get into. The deviation, we think, is established by the exhibits, and that is one of the matters I want to make very clear right now; is that we either have to offer all the census tracts or -- We have got an agreement, I think, from the State --

JUDGE GOLDBERG: You are talking about population deviation?

MR. RICHARDS: Population deviation.

JUDGE GOLDBERG: What districts do you say are the deviation?

MR. RICHARDS: Well, I think the greatest deviation, I suppose, is Dallas County.

JUDGE GOLDBERG: We have gotten 1022
the detailed testimony on Dallas and Bexar and Harris, haven't we?

MR. RICHARDS: Yes. On that -- Well, as I see it, the cases are carrying several theories along with it and we have made that clear in our pre-trial order and it has been our position throughout that this plan that was adopted for the house -- not the Senate -- was unconstitutional, because of deviation and that is our position. We think that the determination of the existence of deviation is simply an arithmetic matter, looking at the census tracts. And, we intend to argue that and brief that point to Your Honors. There is a pre-trial order, and we have been in that position from the outset.

JUDGE GOLDBERG: All right.

MR. RICHARDS: I don't mean to complicate the case at this late state, but this is our position.

JUDGE GOLDBERG: You are entitled to any position that you wish.

MR. RICHARDS: These are the exhibits, then, that we offer.

MR. LEWIS: If it please the Court, we have not had an opportunity to examine these. We have been handed two of them while counsel was talking -- as the Court was coming in, he started to show them to us. Now, of the two that have been handed to us, if admitted in evidence, one of them we already see would call for additional testimony. If we would, if these instruments are to be admitted at this late date, we at least would ask the Court to give us sufficient time to examine them, since they are exceedingly voluminous.

1023

JUDGE WOOD: Well, if they involve something that is new they are not rebuttal. 1324

MR. LUNA: I don't know what they are. I haven't seen them.

JUDGE GOLDBERG: What are you referring to?

MR. LUNA: Well, for instance, Your Honor, they offer on one of them here a letter from the Trinity River Authority from S. M. Wright tendering a resignation. If this comes into evidence we would need to put on testimony to show why--

MR. RICHARDS: They developed it in their case; it is proper rebuttal. It is authenticated by the Secretary of State and he has no objection to it. This is an official record of the Secretary of State and we can prove it without regard to his agreement.

MR. LUNA: I don't content it is not authentic. I simply say that if it comes into evidence-- I don't say it is inappropriate-- but if it should come into evidence our case would simply call for some rebuttal on our part-- very short, but some.

MR. CUNNINGHAM: I think Mr. Luna developed the argument that Reverend S. R. Wright was denied an appointment to this Board because of a senator in this room. I think this is rebuttal to what Mr. Luna said. Reverend S. R. Wright was on the Board and he resigned.

MR. LUNA: I am not sure it rebuts. It confirms, because the instrument-- If it stands in at this time, it talks in very vague language about--

JUDGE GILLESPIE: Now, gentlemen, we started this trial with the idea that we were under a very severe time handicap. Now, if you think this matter of is such consequential significance in the determination of this case I suppose we will just have to go on and on and on and just forget about time tables and time processes. And, as I said before, somebody is going to lose this case sometimes down the line, somebody is going to want to take a trip to Washington and start knocking on some doors. I want you to be able to make your plane reservations and knock on the doors and make your arguments. Now, if you persist in this it is our duty to

1.26

hear anything and everything that you think is necessary to your case. But, I must call your attention repeatedly and boring and tedious as it may be, that you should give this some very heartfelt consideration. Now, whether Mr. Wright resigned and whether he was objected to by a senator really-- Really, now, do you believe that this is germane to the ultimate disposition of the issues in this case?

MR. RICHARDS: No.

JUDGE GOLDBERG: Well, let's go on, gentlemen.

MR. McDANIEL: Your Honor, I have some objections to this material, I suspect, from what has been said, though I have had no opportunity to review it. The thing that I point my objection to is the tendering at this time of maps which are alleged to show better plans for less deviation of the state which may conflict with what I conceive to be a legitimate state policy which caused some of those deviations, and I certainly would want to look at those plans to see if they are objectionable in violating state or

federal law, and I have had no opportunity to do that.

JUDGE COLEMAN: With respect to the plans the Court will have a word or two to say about that a little bit later on when we conclude this case. But, with respect to the tendering of this particular document, it seems to me, Mr. Pudenial, that what you should do is to object, either now or in writing, to the documents, if you have any objection to them -- to it or to them. And, we in turn will consider the documents and your objections, and we are perfectly willing to receive your objections in writing after the trial of this case. Isn't that perfectly satisfactory?

MR. PUDENIAL: Yes, sir, it certainly is.

JUDGE JUSTICE: I might add that at the pretrial in this case the parties were instructed to have a plan prepared.

JUDGE COLEMAN: The plans we will get to as we proceed. Now, go ahead. What other tidying up do we need?

MR. NICHOLS: I have served the state

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with certain interrogatories that we have had some difficulty having answered. The last series have now been answered, and I would like, if I may-- I have conferred with Mr. McDaniel and with Mr. Lane and Mr. Johnson and these are their answers, if you have objection to them. I inquired of the State if they knew of any legislative redistricting in the United States that was larger than-- had larger population than that of Dallas County, and they have answered that they know of no larger district.

MR. RICHARDS: I inquired of the State -- put out certain figures on white and non-white population in Dallas County, census data for the years 1950, 1960 and 1970 and asked if they would confirm they were accurate and they have confirmed they were accurate, and I asked questions concerning certain white and non-white statistics for the State of Texas going back a number of years, and they have confirmed that these are accurate, so I am assuming that my interrogatories are on file and that this constitutes the answers them, as I understand it.

Is that fair?

JUDGE JUSTICE: So stipulated by the Defendants.

MR. LOWE: Yes, Your Honor.

MR. RICHARDS: Thank you, Your Honor.

We never formally offered two depositions that were taken in Dallas, the [illegible]ly deposition and the Zimmerman deposition, and we want to offer those now without summarizing them. And the Scott deposition, which I think we did offer.

JUDGE JUSTICE: What deposition?

MR. RICHARDS: Rook, McNealy and Zimmerman. These were all taken last week and I think are all on file here, but we never formally offered them.

And may we ask then two things, if we could, as a final wrap-up, that the Court will take judicial knowledge of the 1970 Texas census figures by tract, and if we file written briefs, we can simply attach that information without having to tender the entire --

JUDGE GOLDBERG: Yes, we certainly could take that judicial knowledge of that.

MR. RICHARDS: Finally one item that came up yesterday was about the Indiana statutes, and I would like to ask the right, if I file a written memorandum, rather than having to physically list those statutes and put them in the record, we can mark them and attach them to our brief selected portions.

JUDGE JUSTICE: Sure.

JUDGE GOLDBERG: And if they are not accurate, we will get them from the other side.

MR. RICHARDS: That is my tidying up.

JUDGE GOLDBERG: All right, sir.

MR. MC DANIEL: I have one tidying up matter

that I would like to get the Court's understanding on. As the Court is well aware, we have had a number of interventions, some of which have been voluntarily waived as to proceeding along with the case. The State has not filed an answer, as such, to some of these interventions. Our thinking was that our original answers in this suit were sufficient answers to the interventions; and under the rules they could be and would be so considered.

JUDGE COLEMAN: We will so consider them, absolutely.

MR. LUNA: The same thing for the Democratic Party.

JUDGE JUSTICE: Yes. Incidentally, there has been no formal order, in so far as I know, relating to these class actions entered by the Court. I ask that counsel prepare such an order.

MR. HILKIN: Your Honor, if I might ask a question. Stuart Hilkin in the Houston, Harris County case. I just heard Mr. Richards formally offer some depositions, and I was under the impression that the depositions were in evidence if filed.

JUDGE COLEMAN: We are just mentioning two

or those that he wasn't sure were in. 1034

MR. HELKIN: Yes, sir. We also had some which were received by the clerk's office yesterday.

JUDGE GOLDBERG: Oh.

MR. HELKIN: And I was not here to make a formal offer. I just assumed that all depositions were in evidence. Is that right?

JUDGE GOLDBERG: All depositions that are in the hands of the clerk will be considered as filed and a part of the proceedings in this case.

Is that satisfactory with everybody?

MR. HELKIN: Yes, sir, thank you, Your Honor.

JUDGE GOLDBERG: Now, what else have we got?

MR. IDAR: On this order as to the class actions, Your Honor, what is it that we want to recite there? Is the Court finding that we have a class action?

JUDGE JUSTICE: Yes.

JUDGE GOLDBERG: Anything further?

(Pause)

JUDGE GOLDBERG: Now, I want to ask a

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question. How many counsel at the table has the irresistible impulse and the desire to speak? Raise your hands.

(Laughter)

JUDGE GOLDBERG: Any arguments -- stand up all that would like to argue this case. I want to just see how many we are going to have.

MR. RICHARDS: Does the Court want to argue. If the Court wants arguments, I want to argue.

JUDGE GOLDBERG: We are going to want argument.

MR. RICHARDS: All right.

JUDGE GOLDBERG: We want argument, so I want to see how many there are.

REPORTER'S NOTE: Counsel arise in the courtroom.

JUDGE GOLDBERG: Now, is there any way --

JUDGE JUSTICE: That's ten of them.

JUDGE GOLDBERG: Is there any way in which -- we will take a recess -- you could caucus among yourselves so that -- we will allow an hour and a half to be divided between the Blacks, the Chicanos, the Republicans --

JUDGE JUSTICE: That's all of them.

JUDGE GOLDBERG: You caucuss among yourselves and decide how you want to use the hour and a half.

MR. RICHARDS: I don't think we will require that much time.

JUDGE GOLDBERG: Well, we want you to have ample time. About this we don't want to be subject to a lot of criticism. We are going to try to lean over backwards. As far as the State is concerned, you will have equal time, and I assume that you could caucuss among yourselves as to how you are going to handle it and so forth and so on. Is that satisfactory?

MR. JANOSKI: Excuse me, Your Honor.

JUDGE GOLDBERG: Surely.

MR. JANOSKI: We have already done so, and may I make this statement?

JUDGE GOLDBERG: Surely.

MR. JANOSKI: In an effort to try to facilitate the presentation of argument -- actually, I do not think that the State will take over thirty minutes, but that we would like to do, and as much as we have motions

pending here, Motions to Dismiss — 1035

JUDGE GOLDBERG: Yes.

MR. JENOBSKI: — is to lead off the argument on those Motions to Dismiss. This is the only argument that we will make if in connection with that, and we will let that also be our argument for the entire case. I intend to present that argument except for a very brief argument by Mr. McDaniel on one phase of the matter.

JUDGE GOLDBERG: We just want to give you plenty of time to argue Motions to Dismiss, anything else that is within your mind and your heart that will help enlighten us. We want to hear you. We want to give you plenty of time. We are going to start at 1:00 o'clock, and by 4:00 o'clock we hope to adjourn this case. Is that satisfactory to everybody?

JUDGE WOOD: We feel like the arguments to us will be most helpful.

JUDGE GOLDBERG: And we will now stand in adjournment for an hour and a half to give you a chance to — oh, I'm sorry.

MR. GEE: May it please the Court, it might help in determining the development of

argument to know whether the Court intends 1036
to receive any written memorandum.

JUDGE GOLDBERG: Yes, we will make the announcement with respect to the written memoranda at the conclusion of the arguments, but we thought it best -- after we hear the argument, the Court will take a ten-minute recess. We will then come back and advise you what further information or memoranda, et cetera, we would like to receive.

Is that a fair agenda for the afternoon?

REPORTER'S NOTE: Various affirmative responses were heard in the courtroom.

JUDGE GOLDBERG: Everybody understands?

MR. JANOWSKI: May we then assume that we may proceed with the argument initially in order to get our Motion to Dismiss before the Court?

JUDGE GOLDBERG: Absolutely, and we will start at 1:00 and give you plenty of time to encompass and decide how you are going to present the argument.

MR. RICHARDS: Do I understand that the State is going forward with their arguments, and we will be put in the position to respond, rather than having the right to open and close?

MR. JENNINGS: We're not going to make any further argument of that. We will not make any argument at the close. This will be our argument. 1037

MR. RICHARDS: Great.

JUDGE SOLOMON: Gentlemen, I think now we have reached the stage where we ask and seek and we hope we will get you some enlightenment. In an hour and a half you should prepare a very fine presentation to all of us.

JUDGE JUSTICE: Court is in recess.

(REPORTER'S NOTE: The Court then, at 11:40 o'clock A.M., January 6, 1972, recessed until 1:00 o'clock P.M., at which time it reconvened.)

Argument - Jaworski

(REPORTER'S NOTE: Whereupon at 1:00 o'clock, P.M. on January the 6th, 1971, Court reconvened and the following proceedings were had)

JUDGE GOLDBERG: I assume you have caucused and allocated your respective times. Everyone please keep with their own time and I will not ask that you all join in in Auld Lang Syne, but let's keep the spirit of it.

Who will have the first argument?

MR. JAWORSKI: If it please the Court, it probably be very apropos for me to say that we did not interject ourselves into this case, Mr. Curry and I. the Attorney General of Texas called me and asked that I render service to the State, which I felt under the circumstances it was my obligation to do. I so responded on prior occasions to both the United States Attorney General and our State Attorney General and I felt under pressures-- I am talking about pressures of

other obligations, I felt I should do so in this case.

I don't want the Court to gain the impression that the paucity the State has indicated in its inability to come up with the $5,000.00 was due to my being in the case, because actually our service, Mr. Curry's and mine, is without any financial remuneration.

I think that it would be helpful to the Court, and this is why we chose to argue the motions to dismiss, to review some of the applicable legal principles here and bear those in mind.

I think the Court has listened very patiently to a lot of testimony and I think wisely and properly so. Everyone has been given the full opportunity, afforded every chance to present whatever might possibly be relevant. In our view the vast majority of what has been presented is not really relevant to the legal issues in the case. But these are matters that the Court can take into account after reaching its conclusion on what the applicable legal principles are.

Argument - Jaworski

It is our view -- it was from the beginning, and after having listened the last few days to the presentation of the evidence, it is our view with even greater certainty than at the outset, that there are no claims here presented by the Plaintiffs as to these complaints that I will address myself to upon which relief can be granted.

Mr. McDaniel will present the State's argument in connection with the San Antonio case, inasmuch as he primarily has studied that case, conducted the examination of the witnesses and as he has indicated, he would speak very briefly on that subject.

Some of the legal principles and concepts that I intend to argue to the Court, of course, will have applicability to the San Antonio case, as well as the other cases. How largely because of the confusion that has existed for some time in redistricting cases, we know that the Supreme Court, seven months ago in the Chavis case, wrote very extensively on the subject -- some pretty near exhausting the subject -- and this was done in order, of course, to furnish guidance, because

redistricting cases had become somewhat the vogue in some parts of the land and there had been some confusion, but one thing has been made abundantly clear now, and that is that the Plaintiffs, the complainants, have a burden to show unconstitutionality, and I say to the Court that this is a rather heavy burden. In fact, in some respects, it is almost awesome and it is our position that this burden has not been discharged.

I would think that the complainants probably realize that. I base that on several things that have happened during the trial of this case. I base it on the nature of the complaints; I base it on the complaints; I base it on the complaints-- I base it also on some of the pretrial memoranda that have been filed here. For instance, the complainants in the Harris County case, the Curtis Graves case, in their trial memorandum, make no effort to distinguish the Chavis case. No reference made to it in the pretrial memorandum; no effort to distinguish it, despite its very marked applicability to this case.

It is also clear that a number of the

other complainants have not seen fit to deal with the full import of that decision. I must come to the conclusion that they recognize the barriers in their direction. Some that didn't deal with it through their pretrial memoranda tried to introduce some evidence which the Court heard, and which I do not have to cover in detail, in an effort to try to show a distinction between the situation in Indiana and the situation in Texas. And the effort that was made through one of the witnesses, of course, on cross examination showed that the witness was not possessed with information at all of any distinction upon which this Court could rely.

Now actually, I hear that a decision rendered only a few days ago is also one on which the complainants want to rely. At least they feel that there is some comfort to be gained by invoking that decision, and it, too, will be discussed by me with the Court because I can find nothing in it that touches this case.

What we really got down to in presenting our arguments to the Court is to say that we do have here, as recently as seven months ago, pronouncements of the United States Supreme Court that we feel makes the burden of this Court a much easier one than would have been true a year ago.

Well, let's dispose, as we view it, of some of the contentions here made through the vast amount of evidence introduced in the last few days. We think that the lack of nicety in a drawing of the lines is not a matter of significance. It may even have been carelessly done. It may have been done even inconsistently in some respects. It may have been done in a way that makes some campaigns more expensive than had been true before. Yes, it may even have cancelled out, diluted some of the votes that have previously been depended upon by some of the candidates in some of the districts. Now we don't concede that any of those things took place, but we say that we could concede them.

Take those matters that I have just

mentioned, singularly or take them collectively and they still haven't discharged the burden that is necessary for them here to present a claim upon which really can be granted. They must go further; they must show that what has been done here was done unconstitutionally. And this is what you will see, may it please the Court, that in the Chavis case, is presented time and time again, very guardedly; the Court points out that what is objected to must be shown to have been done unconstitutionally.

Differently stated, the Blacks, the Mexican-Americans, in my judgment must prove, based again upon the Chavis case, that the redistricting that they are attacking here can be explained only in racial terms. Now is their burden. And this, we say, they have wholly failed to do.

Now, I will take up the Chavis case in a moment -- not to discuss the case -- I know the Court has read the case. All I would like to do is just to emphasize

a few of these pronouncements that we believe are so controlling, not only in that case, but are controlling in this particular case.

Well, let's take the complaint, for instance, that was filed in Harris County by Curtis Graves. The gravamen of his complaint is that now he says there is no Senatorial district in Harris County, Texas that has a majority of the white voters. What case is there that says he is entitled to that? The United States Supreme Court certainly doesn't say it. And even Mr. Justice Douglas, who has been very sensitive to this case, and this is not said without any criticism -- even he has pointed out in the Fortas opinions that this certainly is not a right upon which one can stand.

And again, they say in their complaint, that this apportionment that they are attacking precludes a majority of black voters in any Senatorial district in Harris County, Texas, at this time. But

they are not entitled to a district to that effect.

When Curtis Graves took the witness stand he admitted that he had drawn a district of his own; the district that he believed was right and in his testimony said that eighty percent or thereabouts -- or maybe he even used the expression 'over eighty percent of the voters are black.' Now this is not that the complainants here are entitled to -- clearly not. The whites are not entitled to it and the blacks are not entitled to it and the Mexican-Americans are not entitled to it. There is no constitutional provision that affords them that right, and it is not a violation of the constitution for the districts, per se, to so operate, that the blacks happen not to have a majority of the voters in a district.

Now, with the Courts indulgence let me take the Chavis case for a reviewing of just a few of the principals and I am not going to go back to discuss the facts of the

case because we all know that it originated in Marion County and Indianapolis; we know about the block election; we know what was done in changing the districts from single to plural districts -- single member to plural member districts. The Court knows first that in the Lucas case, decided along with the Reynolds versus Sims case, we noted certain undesirable features of the multi-member district, but it pronounced without any intimation that apportionment schemes which provide for the at large election of a number of legislators from a county or any political subdivision or constitutional defective, and there we again have this word that runs throughout this opinion and that is so very important.

Subsequently, when the validity of the multi-member district, as such, as was squarely presented, we held that such a district is not per se illegal under the Equal Protection Clause.

Then the Court went on to say that the voters in multi-member districts vote for and are

represented by more legislators than voters in single member districts, has so far not demonstrated an ambiguous discrimination against the latter.

Now, the invidious discrimination that has been charged here, and this very term has been used by the complainants and some of the intervenors, the Supreme Court has said simply because you have multi-member districts as distinguished from single member, does not, of itself, indicate the invidious discrimination. You need more.

The Court said, "What we have a system that will challenge and carry the burden of proving that multi-member districts, again, unconstitutionally operate to dilute or cancel the voting strength of racial or political elements; we have not yet sustained such an attack. The Court, pointing out that until June, and we know of no decision since that time by the Supreme Court of the United States, we have not yet sustained such an attack.

Now, to pass from that to one or two of the other pronouncements that I think we ought to keep particularly in mind. We are not ready to agree that multiple member districts, wherever they exist, over-represent their voters as compared with voters and members in single member districts -- even if the multi-member delegation tends to block voting. This is one of the things we heard about here, which is the basis of some of the complaints. The theory that plural representation itself unduly enhances a district's power, and the influence of its voters remains to be demonstrated and practiced in the day to day operation of the Legislature.

And, then, if I may 1050
allude to only one or two other brief excerpts. The Court goes to a close examination of the record and then to pointing out what it does not find, and this is precisely what we do not find in this case. The Court says -- and I think this is the crux of its holding -- we have discovered nothing in the record or the Court's findings indicating that poor Negroes were not allowed to register or vote, to choose a political party they desire to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. And, then, finally, on the record before us, Plaintiff's position comes to this; let's see how similar it is. That although they have equal opportunity to participate in and influence the selection of candidates and legislators, and although the ghetto votes predominantly democratic and the party slates candidate is satisfactory to the ghetto, in vigorous discrimination, nevertheless, results when the ghetto, along with all other Democrats, suffers the disaster of losing two many elections. And, we have had an abundance of testimony here about

elections that have been lost. But, typical American legislative elections are district oriented, head-on races between candidates of two or more parties. As our system has it, the Court says, one candidate wins and the other loses, and arguably, the losing candidates supporters are without representation since the men they voted for have been defeated. Arguably, they have been denied equal protection of the law, since they have no legislative voice of their own. This is true of both single member and multi-member districts, but the Court says "We have not yet deemed it a denial of people's protection to deny legislative seats to losing candidates, even in those so-called safe districts where the same party wins year after year.

May I, for a moment, take up with the Court the case that was recently decided, a few days ago. And I, like your Honor, Judge Wood, read the newspaper, too, and I read where one of the council, who also has been one of the witnesses, testified -- or rather, was quoted in the newspaper as having said that such evidence is placed upon this case of Mine versus

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Finer, decided by a three-judge Court in Alabama on -- well, just a few days ago. Now, here is what happened in that case very briefly. The complainant alleged there was malapportionment in the State of Alabama and the Defendants came in and admitted that there was malapportionment. What actually happened is that there had been a period of six years during which time nothing was done, and the Court being impatient -- and properly so, -- and then the Court called on the State to come in and produce its plans, they not only admitted that malapportionment did exist, but their plan showed the greatest of deviations -- absolutely shocking deviations -- absolutely shocking deviations -- all four of the plans. In addition to that, the State came in and said, "Though we admit malapportionment in -- " not only the State, but all the Defendants -- "let's let those who are serving now finish out their full terms" another stalling, and the Court said, "No, we have waited long enough, your plans on the face of it have such terrific deviations and so wholly unacceptable, that we must go forward

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and we must set up a plan of our own." And I want to point this out, that some of the cases make reference to single-member plans being somewhat preferential over multi-member plans, but in each of these instances, reference is made to Court appointed plans. In other words, though there is no stigma attached -- at the United States Supreme Court -- said to multi-member plans, in instances where the Court does the appointing, the Courts have in some cases, referred to the fact that preference given to single member plans, and this is what, the Court did in this case. And, finding this: first, that the provision could not be achieved in Alabama that should be achieved without the Court doing what it did have in single member plans. And, then, it made reference to the long history of racial discrimination evident in Alabama and, of course, they drew the conclusion from a number of facts -- the long delays plus the wholly unacceptable plans that were submitted -- which show tremendous deviations which the Court concluded were

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designed and were done for the purpose of discriminating against the Black population. Now, the Court will recall there was some effort made here to suggest to a witness that maybe the situation in Alabama was not very much unlike the situation in Texas as far as the discrimination was concerned, and the witness had to admit that he did make a study, but he did first undertake to agree with that. And, the very fact that counsel injected it indicates that there was an effort made to try to link that case to this one.

Now, this Court judicially knows the difference in the situation, and this record bears fairly heavy with any number of instances showing the great strides of progress that have been made in this State over a period of time for the elimination of discrimination.

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And that the state is today one where our state can say it proudly has made great advances. And, to suggest to this Court for a moment that there is any comparison in what has transpired in Texas with what has transpired in Texas with what has transpired in Alabama, under the leadership that Alabama has had, is difficult to understand. Now, while we are speaking on the subject of deviation-- and I will hurry on-- the United States Supreme Court, it is probably well-known by this Court, and we cite the case, the Mann Case, held that a deviation that approached twelve per cent-- eleven point nine-- was not an objectionable deviation.

The record in this case shows-- the pretrial order actually indicates it-- that the greatest that occurred at any time was over 5.8 at any one place, and under a 4.1, making a total of 9.9. This was explained in the few instances where there was a deviation; it was explained as having been done-- and the depositions fully show this-- because of not wanting to cross county lines and wanting to do the best job that could possibly be done

consistent with staying within county lines. Now, perhaps a very brief comment should be made on one or two of the cases they have cited, inasmuch as I don't intend to make further argument to the Court except to get these matters before the Court that we believe govern and are controlling in this case.

The Gomillion versus Lightfoot case, which was decided in 1960. Now, this is the type of pronouncement, the type of holding, that it is suggested as applicable to this case. And, what occurred there was that the Alabama Legislature decided to change the boundaries of the city of Kaskega, and what was done is they left out all of the Black voters and residents of-- over four hundred that had lived within the city, except four or five-- just put them outside the city limits. Well, of course, what happened in that case was that the lower court dismissed the complaint, the United States Supreme Court, of course, reinstated it. This is a star illustration-- a striking illustration-- of a situation that is the reverse, really, of what the complainant

Graves wanted, and that was to exclude all of the whites from his district except some eighty per cent.

In Connor Versus Johnson, which has also been cited here, the Court merely discussed what I have mentioned a few minutes ago with respect to court apportionment plan, and the fact that there is at times preference-- a preference given to single-member districts where the court fashions the apportionment. Now, may I suggest this, that in the final analysis-- and some of the questions that members of the Court asked brought this out, I think, very brightly-- what does it depend on? When we are unhappy about losing a race, when we are talking about someone who has won a race, what we are talking about members of races or members of ethnic groups, what is there?

That brings to the forefront the difference between failure and success. Oh, there are so many-- so many factors and so many elements that enter into these campaigns, as this testimony showed, and as the Court members themselves by the questions brought out that are

Argument - Jaworski

far removed from any question of races.

Take the case of Senator Jordan from Harris County, Barbara Jordan, one of the most highly respected of all legislators in the State of Texas, a black woman who has been given high accolades by the white race, as well as the black race.

Why? Intelligence, application and industry and energy and a tremendous amount of dedication and devotion to duty, regardless of race.

Her testimony is in this record. She says in Harris County there are five that under this new plan are safe -- blacks -- possibly, probably even one or two more. Under the redistricting she says she believes she could be elected in her senatorial district.

Why? Because it is Barbara Jordan with her abilities.

Judson Robinson elected in Houston over an incumbent white man and another one elected by a majority of the people in Houston. Judson Robinson, a black man.

Why? The ability, the energy, projecting themselves as a citizen worthy of the right

to hold public office despite the fact he is black.

I think I have taken my time, may it please the Court, and I appreciate it very much. Perhaps I have even gone over my time a little.

JUDGE GOLDBERG: May I ask you two questions, Mr. Jaworski?

MR. JAWORSKI: Yes, sir.

JUDGE GOLDBERG: First, do you think that the act of the Redistricting Board is more analogous to a legislative act than a judicial act?

And the second question is, do you believe that there is any constitutional invidiousness in dealing with Harris County one way and Dallas County another?

MR. JAWORSKI: No, I don't think so, and this is why -- I will answer the last one first.

First, I think that I would agree with Your Honor that it is a legislative act. This is the group that was created by the Constitution acting pursuant to that. One might say that some

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of the functions that they perform may be quasi judicial, but by and large what they are performing is an act of judgment, it is true, pursuant to a legislative and a constitutional command. The reason I say that, although I have no decision to support it, really -- it is purely my own personal opinion. I think it could be argued either way.

Now, as to the second one, may it please Your Honor, I don't think that the question of inconsistency as such is one that controls. It is just as I said at the beginning. Actions may be inconsistent. There may be other reasons for it. There may be no particular reasons for it, because you have got to go further than that.

The mere point of inconsistency gets you nowhere unless you can show -- I'm talking about where it looks like something has been done in one district on a single member basis and in another district a multimember basis. You certainly are going to have to show that the Constitution has been violated in some respect before there is anything that is invidious about

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that.

Those are my answers, may it please the Court.

JUDGE GOLDBERG: Thank you.

MR. McDANIEL: May it please the Court, my remarks will be brief.

The first question that I would address myself to is the situation concerning Senate District 19 — 21 — excuse me.

JUDGE JUSTICE: Are you arguing on the Motion to Dismiss?

MR. McDANIEL: Sir?

JUDGE JUSTICE: Are you arguing on the Motion to Dismiss?

MR. McDANIEL: Yes.

(REPORTER'S NOTE: Counsel displays map.)

MR. McDANIEL: In San Antonio -- they can see this fine, I think, from here, Tom.

This is not a question of a pretty district or perhaps a district as we might desire it to be. It is a question which comes from

having a situation in San Antonio where there are 110,000 more people than are required for the two full congressional districts that Bexar County is entitled to. There have been statements made that this is a gerrymander, but the testimony is clear, both from Mr. Archer and from Mr. Hilbar this morning, and they are the only two that I recollect right now who have testified on this particular thing, that no matter where you take that 110,000 people out of Bexar County, they have no community of interests with the people in the lower end of District 21. A choice had to be made, and it was made.

It seems to me there is very little to choose [illegible] between a U-shaped district, which would both result from taking the population out of the lower part of San Antonio in Bexar County, and a cone-type district surrounded by District 21.

In either event, you have no community of interests.

The problem there is not desirability so much as it is alternate, it seems to me.

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There is no satisfactory alternate. I feel quite certain that had this conservative Republican element of the population of Bexar County been put into Senator Bernal's district, Mr. Idar would be here in this same lawsuit, arguing there had been gerrymandering to defeat a Mexican-American.

The second thing I want to briefly discuss with you is how the population deviations in the House Apportionment Plan were achieved.

As the Court is probably aware, the Supreme Court of Texas this past summer struck down a House Apportionment enacted by the Legislature. One of the bases, if not the main basis, upon which that bill was struck down, was that Grayson County had been divided and that other counties had been divided in violation of the State Constitution.

In Texas the State Constitution provides that all senatorial districts shall be single member and has no provision whatsoever relating to the observance of county lines. It provides House districts shall not violate

county lines and has no prohibition against using multimember districts.

Of course, it does provide that where an urban county is entitled to one or more representatives, then the surplus may be carried into an adjacent district.

This put the state in a quandary, because we have the Supreme Court of Texas on the one hand saying, "If you violate a county line, you must be able to demonstrate that it was necessarily required by Federal law," and we have the Federal law on the other hand saying, "You must get as close as possible to mathematical precision. However, we recognize that legitimate state policies and rational state policies do provide some leeway, as long as it is not too great."

Of course, the problem is what do they mean by too great. We tried to take a reasonable stance. We tried to draw a plan which minimized the cutting of county lines and yet achieved a minimal population deviation.

One county line, other than a situation where you have an excess carried out of

the county, occurred in the plan enacted. I will show the Court where it is. This is attached to one of the Pretrial Orders and will be before you.

That occurs in the extreme northeast part of the state. It occurs there because Bowie County has 68,000 and some-odd people. The optimum number for a representative district is a little over 74,000, as I recall. I do recall clearly that one percent is equal to 763 people for House Apportionment.

Bowie County is adjacent to three other counties. Two of them have 14,000 some-odd population, and one of them, Morris County, which extends diagonally into the state, has 12,000 and something. It could have been joined with Morris County, but if it had been joined with Morris County, the population deviation would have been about a percent up. It was decided to split Red River County which creates two districts up here (indicating) of almost optimum size and does not result in a wedge driving in from the corner of the state, which severely restricts what you can do in the rest

of East Texas. Severe problems in drawing these districts without violating county lines are presented by East Texas, because the counties in East Texas vary in population from around 12 or 15,000 up as high as 35,000, and you have to choose your building blocks very carefully over there.

The third thing that I wish very briefly to comment on -- I don't think I need to elaborate on it--.

JUDGE GOLDBERG: Is that the only deviation that they allege?

MR. MUTSCHER: The deviation goes from a high of 5.8. That is the highest, and it occurs in District 3, I believe is the number. It is the district which includes Harrison and Rusk Counties. One of those counties has 40-something thousand people, and the other has 30-something thousand people. And there are only two ways you can draw a district including Harrison County.

The lowest under is 4.1 percent, and is also is in East Texas, and I don't remember which district, but it is very close

to this one (indicating). The others vary in between those.

A number of them are pretty close to the optimum, really.

The other thing I wish to comment on very briefly is this constitutional question that Mr. Jaworski has discussed rather thoroughly, I think, as it regards Bexar County. It is very difficult for me to see and, indeed, I think the Mexican-American Intervenors have totally failed to discharge their burden of proof in this case. It is very difficult for me to see how you can say that a multimember district is unconstitutional in Bexar County when the group of people they are representing as a class and for whom they have intervened do not constitute a minority in the county and when they have already demonstrated in the past the ability to elect representatives to the State House.

Now, it is true there are problems of poverty. It is true that they could probably elect more Latin-Americans consistently to the House from certain districts with single member representation, but, as I understand it, that

is not the constitutional issue.

The question is, do they have effective and adequate representation, and I believe the testimony that we have presented and the evidence generally shows that they do.

Thank you, Your Honor.

MR. [illegible]: Is Mr. Luna going to argue?

MR. LUNA: No.

JUDGE GALLOWAY: You are not?

MR. LUNA: No.

MR. [illegible]: May it please the Court, I am Stuart Malbin from Harris County in the Harris County Curtis Graves case.

I think that there are a couple of things that I ought to say at the outset to set the stage for this particular case. This is not a Whitcomb versus Chavis case in my opinion, and for that reason, as Mr. Jaworski indicated, Whitcomb versus Chavis was not cited in the Pretrial Memorandum.

In that case specifically itself said, the Plaintiffs in that case or the Appellees to the Supreme Court had stipulated that there was no

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racial motivation in the way lines had been drawn or in determining that multimember districts would be used, rather than single member districts.

In our case we have specifically alleged that there is and was a racial motivation in the way Harris County senate district lines were drawn, and for that reason we think that Whitcomb versus Chavis is not the applicable standard, but rather Sims versus Baggett and the cases that follow in the line of Sims, most of which have been written by the Middle District of Alabama, either by one or three judges, as well as the similar case of Gomillion versus Lightfoot -- should be the cases that are followed.

Now, with respect to racial motivation, I think that the Plaintiffs in this case have discharged their burden of showing motivation or intent by both direct proof and by inferences which are simply compelling under the circumstances in our case.

With respect to motivation, I don't know if the Court has had the opportunity of seeing

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depositions that were filed with the Court yesterday, but they included the depositions of Sammy Brazzell and Everett Collier. Now, I appreciate the fact that the Court was a little -- well, the Court was anxious for us to move quite quickly on the subject, and some of the information we were giving with respect to Everett Collier and/or Sammy Brazzell seemed at the time irrelevant, but I believe if the Court will study the depositions of these two gentlemen, we will see that, in fact, lines in Harris County were certainly racially motivated. The lines were drawn in that fashion, and I would like to point to a couple of instances in the deposition, which we feel sustains the burden of direct proof of racial motivation.

With respect to Sammy Brazzell, who Bob Spellings' deposition will indicate, drew the Houston Chamber of Commerce plan. It is called the Houston Chamber of Commerce -- Sammy Brazzell plan. Mr. Brazzell himself testified that in drawing the Sammy Brazzell plan he was interested in keeping liberal voting

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blocks in Harris County.

Now, of course, he didn't use the word "Negro," but this Court would have to be blind to the fact that in Harris County liberal voting blocks and blocks are the same thing.

Mr. Brazzeall indicated and Professor Murray indicated both that the analysis was made from Benson, Yarborough, Democratic Primary election returns.

Mr. Brazzeall acknowledged that with respect to Democratic Primaries, black people in Harris County, black precincts voted overwhelmingly for the liberal Democratic candidate, and we feel that that is what is important in this case, because Mr. Brazzeall, who drew the lines and who Professor Murray said the probability was zero that the lines in the Searcy Brazzeall map were not listed and placed into the -- at least in great part with respect to the case, the plan that became law -- Mr. Brazzeall acknowledges his primary purpose was to get conservatives elected, and the way to do that was to hunt up liberal voting majorities, liberal voting blocks and place those in with

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white conservative majorities or with conservative majorities.

Now, the only thing that is not there, Your Honors, is the term "Negro" or whatever the term might be. The fact of the matter is that 85 to 90 percent of black people vote overwhelmingly liberal democrat, and that was the purpose of Mr. Brazzeal.

Now, Mr. Brazzeal was asked whether or not he discussed (1) his plan with Everett Collier, and he said yes, he had discussed his plan. He was asked whether or not he and Mr. Collier had ever discussed race, and he said, "No, we were concerned more with politics than with race." This is a characterization. It is in the deposition.

Yet, Mr. Collier was asked in his deposition at Page 23, "Have you ever talked to Sammy Brazzeal about the racial make-up of the area of the city and the area of the city voters?"

"Yes, I have discussed that with him in relation to this very map."

Now, that particular map that they are

talking about is the map that Mr. Collier testified was brought to him by Senator Brazewell that they had discussed together. That is the map that now dictates and is, in fact, for the most part the core districts of Harris County, Texas.

Now, it is one thing to say that this is a political gerrymander and that we don't have a right to say Republicans or Democrats or whatever have a right to be elected to office, but it is another thing to say, "We are going to bust liberal voting blocks," when that term and blacks are synonymous in Harris County.

Interestingly enough, there is a substantial number of white liberal voters in Harris County in the Pasadena area, which Professor Murray testified to. Yet, if you look at the plan, you will see that they were not divided. It was only in the core area, and the core area, as Professor Murray testified to, was for the most part substantially black and liberal Democratically voted.

Now, I think that that is direct proof, and, of course, when you couple that with

the fact that Representative Fauntleroy stated that Lt. Governor Ramsey, as far as the Watcher's information, had a commitment to the Houston Chronicle, the Editor of them is Prescott Collier, I think that is in just impossible not to draw that conclusion that race had a factor or was the outstanding factor in the way Harris County lines were drawn.

(No omission here.)

Now, with respect to the inferences that I mentioned, I think that if we look at the cases of Sims versus Baggett -- if we look to the other cases that are also along that line, such as Smith versus Darmont, 257 Fed. 2nd 7981, as well as Bellows versus Russell, we see Judge Johnson in almost every one of these cases, saying, "We have got a racial effect", and we have got a background in this State, in the south, of dilution of Black votes, either through poll tax, through literacy tests, through grandfather clauses -- you know -- all of which we have had in Texas and of course, you can take judicial notice of the cases, the Jaybird Primary and everything else in this State, deliberately designed to dilute Black voting strength.

Judge Johnson has said when you have a racial effect, which our experts testified to, which no one denied, Senator Jordan included, that given the background of Texas politics, the inferences compelling that these

was a racial motivation in the way these lines were drawn.

And, of course, another thing you might look at with respect to the contentions we have of having all of these votes together, Harris County is the only County that has single member districts.

In all of the other counties they are complaining about the fact that minority voting strength has been diluted because of multi-member districting. But Harris County has the unique situation of a Senate problem, and of course, as Professor Henry testified and as Mr. Roosevelt testified, there was an intention there and a hope there that Brown, Ogg and Lewis, conservative Democrats, would be elected. The way to do that was to bury up liberal voting minority and that seems to bury up the Blacks.

JUDGE GUINN: There is no testimony in this record that the single member districts in Houston were racially

motivated, is there -- Harris County single member districts?

MR. MALLIA: No, sir.

JUDGE GOLDBERG: They are all right?

MR. MALLIA: It is not part of our lawsuit. I will just leave that for some other Plaintiffs. But I have not examined those.

JUDGE GOLDBERG: Well, would it be a fair or would it be an unfair inference to say that that racial motivation is only found on the Senate side, but not on the House side?

MR. MALLIA: As far as our particular lawsuit is concerned.

JUDGE GOLDBERG: It would be an unfair inference?

MR. MALLIA: I don't know if it is an unfair inference.

JUDGE GOLDBERG: Unjustifiable inference?

MR. MALLIA: I don't know the facts in the House.

JUDGE GOLDBERG: No. Let me state it

again.

MR. HILBUN: Yes, sir.

JUDGE GUINN: So we can understand each other. There is no proof -- no allegation to prove the single member districts in Bexar County have any constitutional invidiousness to them?

MR. HILBUN: No, sir.

JUDGE GUINN: Would it be an unfair, unreasonable, unjustifiable inference that if all of these bad things are to be found in the Bexar side, we wouldn't find them on the Dreeben side?

MR. HILBUN: Yes. That is an unfair inference.

JUDGE GUINN: All right.

MR. HILBUN: Now, with respect to the question of effect, I think that the testimony is uncontroverted, both from the witness stand and from depositions, that whatever the intent of the people or whatever the motivation of the people who drew these lines, or had a part in drawing these lines, nevertheless, the

effect was to dilute the Black voting strength. And interestingly enough -- it is not interestingly enough; it is a matter of fact, we have not stated we are entitled or guaranteed or that we have the right to be guaranteed a Black seat; we have simply said, "You can't take a step backward." This State has worked too hard, or the Federal Courts have worked too hard to guarantee Black people some similarmee of representing themselves, and when they finally get their first Black Senator from Harris County, the first chance to redistrict, that Black Senate seat is gone. And she has so testified, herself, that she thought she could broaden her base, that she also said the fact that a white incumbent was in that area, would make it extremely difficult for her or anyone else to be elected, and particularly inasmuch as she has announced for Congress, particularly for someone who is not

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an incumbent Senator, such as himself, who is a Black, for her to be elected it would be virtually impossible.

Now, that particular district I am speaking of is the district that has the liberal -- the white liberal vote in it. Nevertheless, it does have a white incumbent Senator.

The other point I might make is I think that there has also been a substantial end-run in the requirement that Zimmer versus Baggett set out.

Zimmer Versus Baggett had a showing -- an inference that Judge Johnson felt was compelling with respect to a finding of motivation. And of course, Gomillion had always been used as an inherent or a motivation case. Nevertheless, the Supreme Court has said in Palmer versus Thompson, which was decided a week after Whitcomb versus Chavis, and involved the Jackson Swimming Pool case that was closed, the Court stated that in fact, people had used

some of the reapportionment cases as requiring a motivation or an intent in the 14th and 15th Amendment situation. However, they specifically stated in that case that Gomillion was an effect case, rather than an intent case. And as far as we are concerned, we have no requirement of proving anything as far as motivation, but we feel we have adequately substantiated both the burden of motivation and intent.

Dr. Murry was never seriously cross-examined, nor were any other of the witnesses seriously cross-examined, and the proof is uncontradicted that there is a racial effect in Harris County; that there is the likelihood of no Blacks ever being elected to the State Senate in Harris County til the next reapportionment.

So, you know, the Court really has a choice and they can either write off the Black people in Harris County for another ten years, or they can recognize the fact that if you don't use the term "Negro", and use some other term, such as "Black voting block" or "Liberal voting block", in this State, part and parcel they are one in the same.

We think that we are entitled to judgment; we think that the plan that Professor Murray presented did not-- I might indicate did not establish a majority Black district. We are not asking for that, we simply want a chance. We want Blacks to have a chance to elect representatives of their own, and that is all that they had before, that is all they are entitled to under the Constitution, and that is not what they have at this time.

JUDGE WOOD: Well let me ask you this one question, Counselor: You made the statement that the Board cannot dilute the Black voting strength. Well, I believe Whitcom versus Chavis says you can't dilute it unconstitutionally, doesn't it?

MR. NELKIN: That's correct.

JUDGE WOOD: And what that means is, you cannot dilute it arbitrarily and unreasonably? Is that right?

MR. NELKIN: Well, that is in part, right.

JUDGE WOOD: Well, Mr. Justice Brandeis in many of his decisions used to state repeatedly that if the action of the Board or of the government agency or of the legislature was not arbitrary and unreasonable, he would vote to sustain it. That was his test of constitutionality.

In this particular case do you feel like that you have shown-- you have assumed your burden to establish in Houston that the dilution of the Black voting strength had been arbitrarily and unreasonably exercised by the Redistricting Board in this case?

MR. NELKIN: Your Honor, two answers to that question.

JUDGE WOOD: All right.

MR. NELKIN: The first one, I think, is that when we call into play the question of unequal protection, the burden then moves to the

State to show a rational basis. That is the equal protection law, as I understand it.

Now in this particular case I would also say that we certainly have established the burden of irrational acts on the part of the legislature, or the Redistricting Board. Bob Spellings, who drew the map, as he stated, for Harris County and for the whole State Senate, testified he used certain concepts; the core concept, community of interest, compactness and contiguity and took into account race. He asked our professor, Professor Murray, who was not seriously challenged as an expert, whether those particular principles had been complied with in the law, as it presently exists and he stated that every single one of these principles had been done violence by the type of map that was drawn. There was no contiguity, the lines went all over. There was no compactness; we had a horseshoe all of the way around from the north-- I guess the northwest, all of the-- southwest, I beg your pardon, to the southeast part of Harris County, looping all of the way around the district, including people who had no more

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community of interest than the people who are established in the new 11th or the new 6th District.

And with respect to all the principles that Bob Spellings stated he had used, Professor Murray stated that none of those were complied with. Professor Murray distinguished expert in the area. Bob Spellings, as you see from his deposition, had approximately a couple of days experience in drawing maps before he drew this for the State Senate.

Another interesting point, I think, is a statement that Mr. Sam McDaniel made early in either the pretrial or the opening part of this trial, and he said, "It is the position of the State that we don't have to do anything. You know, we can stick our chin out and you try and hit it." We say that these are political decisions and, "We don't have to justify anything." And of course we disagree with that particular characterization. We think they have a burden of showing some rational basis and they can't do it. All they can argue is one man, one vote. And we further think Professor Murray adequately

discharged that burden.

JUDGE WOOD: Thank you.

MR. McDANIEL: It is inappropriate, perhaps, to say that I would like to-- that I do not recall the conversation Counsel eluded to.

JUDGE JUSTICE: Which conversation?

MR. McDANIEL: The one he eluded to at the end of his argument that I stated-- reportedly stated about all we had to do was stick our chin out and let them hit it.

MR. RICHARDS: May it please the Court: We began with the premise that an irrationality, very basic and essential irrationality arises in the treatment of Harris and Dallas Counties in the reapportionment plan.

The State, in response to interrogatories, through Mr. McDaniel here, and it is recorded, indicated that there were neither practical nor theoretical justifications for the different treatment between Harris and Dallas County, but rather, it was a political decision and we think that is a fair reading of the deposition.

We see much more involved than simply the exercise of a choice, that is, a choice between competing plans, multi-member or single-member for rather, we have here an abandonment by the State of an announced State policy, for in Kilgarlin versus Crawford Martin, the State represented to the Federal Court that the State policy was that any time a county exceeded one million voters, that became unworkable and that that county would be subdivided into legislative districts.

As reflected in the Court's opinion, the Federal Court was lead to believe that any time a county in the future attained one million voters, it would be divided. Now somewhere-- we are not sure-- but that policy got lost in the reapportionment scheme and strangely enough, the players are essentially the same; the Defendant was Crawford Martin, the Speaker of the House was Lt. Governor Barnes and the sponsor of this testimony was the present Speaker, Mr. Metcalfe.

JUDGE GOLDBERG: While we are on that subject, what is your position with respect to

the other counties: Travis, Lubbock-- what are some of the others?

MR. RICHARDS: Well, there are worlds of them: Nueces, El Paso and others.

JUDGE COLBURN: Since you are on the subject.

MR. RICHARDS: Well, I guess we have two positions; one position is, we think single-member districts are preferable everywhere. We think the case is so compelling in Dallas that we have no only-- because here we have an abandonment, as I say, of a policy that the State said was going to govern in the future and I think we have noted at least a fair showing of proof that the Blacks have historically, and still presently are being excluded from the process in Dallas.

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We have challenged, and do challenge all multi-member district schemes throughout the State and urge that single member districts prevail throughout.

We feel we have concentrated our proof on Dallas County and we do suggest, at least, there is this rather fundamental distinction that the State, at least, fought a policy five years ago that would have required dismembering Dallas County, that they have jettisoned now without explanation. So that we think that at least puts the doubt in cause that -- the same situation arose in Kilgarlin -- the Federal Court, itself, you know. What explains the cutting of Harris and deleting of Dallas alone and they said, "A policy that one million citizens is unworkable", so the Court said, "Well, this is rational. This is a rational line to draw."

Now we suggest, however, that if that was a rational line to draw in 1965, it becomes exceedingly irrational to abolish it without explanation, and that is exactly what has happened here.

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The effect of the at large system in Dallas County is, it seems to us, rather clear. It is clearly unconstitutional in two respects. We think we have demonstrated -- we hope we have, as a practical matter, the Blacks citizens of Dallas has been frozen out of meaningful participation in the nomination process. We will have in a very short pretrial brief that we think will be a meaningful distinction between Whitcomb and we would like to do it in a subsequent memorandum.

We also have another problem that arises out of Dallas County at large; a problem we consider to be of dilution and unlike the supposition of Mr. Ferenti, we did not stipulate the State's figures on dilution were accurate at all, but contrarily, we think the fact of dilution effect on Dallas County is that Dallas County is over-represented by some twenty-one percent, whereas Bexar County is under-represented by approximately eight and a half percent. We say this in good reason. I see the perplexion -- the distraction on the Court's face. The State, for purposes of analysis

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of deviation have treated Dallas and Harris as if they were single member district counties, and what they have done in Dallas is they have analyzed Dallas just like Harris; they took the shortage of population and they sprinkled it out through eighteen Legislative districts, as if Dallas was dismembered into eighteen Legislative Districts, and said, "You see the deviation here is just eight-tenths of one percent", as if Dallas was in the single member districts, and that would be the deviation if Dallas were in a single member district.

But the district, the meaningful district the State argues for is the county -- the at large county as a district, and that district is under-populated by almost seventeen thousand, a deviation then of something in excess of twenty-two percent, in view of the fact that the optimum district is seventy-five thousand. The deviation that flows from --

JUDGE GOLDBERG: -- If you had single member districts, it would not apply?

MR. RICHARDS: That is exactly right. The deviation would be what the State now says

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it is; here then one present.

We suggest that the State cannot have it both ways. They cannot -- they.

As far as blacks are concerned in Dallas County we have never supported and we do not want to be thought to support that blacks are entitled to have black legislators or black Senators, but only that they are entitled to equally participate in the process. I thought Councilman Allen stated it very well that they be heard meaningfully, whether it is a designation of blacks or whites to represent them in the process when it is at a stage when it is meaningful. And I think that is our contention.

We think that the historical differences in Dallas County and Harlem County are dramatic. We look to 1957 -- admittedly to fourteen years ago -- but it at least gives us some flavor of the times when the Dallas County legislative delegation was elected at large, right at the threshold of passing segregation statutes; one of the delegations from Dallas County at that point was pressing a bill through

the legislature, that would have, in effect, driven the NAACP out of the State of Texas. Now that was the political climate in Dallas in 1957 and '8 and the candidates were run against in Dallas County on the grounds that they NAACP support and the record here will show a full page ad saying, "Don't vote for him, he is for the NAACP."

Now the question we think we have in dealing in this area of fair representation is, it has that hostility that was so manifested in 1958, was so discounted that the Court can assume that the dominant white majority is no longer hostile to black interest and hence, fair representation flows.

We think one, historically, these things don't disappear that quickly. Two, we hope that some of the evidence we have got in the record, and it is in the deposition, reflecting a continued reliance upon racial campaign tactics, appeals several ways, we think. It appears to an assumption on the part of those who have fallen politics best, that when the time comes, the electorate will still respond to a racial appeal. They who the elections and they are relying on racial appeal, then, they must be the best judges of whose prejudice still persists and the dominant white majority in Dallas County. We raise the second question about the Legislator who is elected, in part, upon a basis of racial appeal, appears to be quite different actions that he could defend in response to the total community, including the Black community, when conflict arises between the Governmental interest between the two.

For that reason and for reasons, we hope, that are of record, there are meaningful distinctions between Indiana and Texas. While Indiana was enacting anti-discrimination legislation in the 1950's and I think, when the Supreme Court said there is no showing of a reoccurring poor performance on the part of the legislative delegation as far as the interests of the Negroes in Marion County, they were looking in part to "this is what we have got. We have got a stay that the Legislature is passing fair housing laws, passing fair employment laws" at the same time -- in 1956 they were on the books in Indiana. And, in 1957 we are still passing segregation statutes in Texas, so, there are -- At least through the 50's there was reoccurring poor performance on the part of the Dallas County delegation as regards the poor Negroes of Dallas County. This seems to me is where we began the analysis

of Chevis in our present case.

Chevis, to us, is applicable essentially to the exemption of our two party primary; you who cast late elections in November. And, what is really all the Chevis could happened here; the Democrats lost in November. The Democrats were electing candidates acceptable to the ghetto, the Democrats were taking into account the wishes and interests of the Blacks in the ghetto and if the Democrats had won in November, the ghetto would have been represented, but we do not think that is our case. We are dealing in a one party state in which the decisions that are made with regard the legislative delegation are made not in an open primary, but, at a precinct caucus, made because of the freeze of size, money and communication by a small group who dominate the Dallas County election process. We do want the right, if the Court will permit us, to file a

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memorandum brief. Our original brief was necessarily short, because of other pressures of time. And, that concludes the presentation on behalf of the Dallas Alaska. Do you have any questions, Your Honor?

JUDGE GOLDBERG: No. We will discuss the briefs after everything is finished. You may continue, Mr. Idar.

MR. IDAR: May it please the Court, on behalf of the Formal Intervenors, the Mexican-American class in this case, I would like to address myself to two or three of the points that Mr. Jaworsky commented upon before I proceed with the presentation of my own aspect of the case. He alluded to the fact that in some of the pleadings or memorandums that we had failed to address ourselves to the case law in question. Now, I have filed -- or we have filed with the Court a trial brief -- and our pleadings also reflect -- that the fact that we have addressed ourselves to what I consider some of the key language

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In the Chavis case that presents our situation. At one point the Court in Chavis stated, "But we have deemed the validity of multi-member districts justiciable", that is, they can be questioned. Recognizing, also, that they may be subject to challenge for the discriminatory use of a particular case may operate to minimize or cancel out the voting strength of racial or political elements of the voting population.

And, this is the key language at this point. "Such a tendency, we have said, is enhanced when the district is large", as we have here, Dallas, Houston, Bexar and a number of them are large and elections substantially -- "and elections substantially in proportion of the seats in either House", that also fits our case. That fits our language might come to the last dotted i of a bicameral legislature, if it is multi-numbered for both Houses of the Legislature -- that, we don't open up with. One Senate is single and the other is

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multi-number in part and single number in the other portion.

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Or if it lumps the provision for at large candidate running from particular geographical subdistrict, as in the Fortson case there -- which I believe, also, incidentally is true here -- some of them were multi-member districts except for Harris County provide for any further subdivision of the residence qualification of candidates running from any particular area. The Court later on addresses itself to the typical American election as being district oriented or head-on races between candidates of two or more parties. I don't want to belabor that point, Mr. Richards just touched on that. There is some additional language but I would like to proceed to something else. With respect to the Alabama case, Sim versus Fharr, which is the one that has just been decided, there is very significant language. The court, after speaking about Chavis at one point here, states, "In these cases" -- these are the cases that were before the Alabama Court -- "we chose to follow" -- they didn't follow Chavis, apparently -- "We

chose the -- I am sorry, I will read this portion and then get to what I am really concerned with. "The rule enunciated in earner not on the ground that it utilized multi-member districts with inherently discrimination against blacks, but primarily on the ground that to do otherwise would sacrifice the mathematical precision which can be achieved in Alabama only by a single member plan." Now, this next sentence, "Secondarily" -- this is the other prime factor that the court considered -- "We do know that Whosoem arose in Indiana, a State without the long history of racial discrimination evident in Alabama, thus we feel justified in pointing out that in Alabama it is reasonable to conclude that multi-member districts tend to discriminate against the black population." Now, I can assure this Court that I, for one, don't take any particular personal pleasure in, you might say, washing our dirty linen out in public. I don't particularly enjoy pointing out the weaknesses, the prejudices of our institution

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or individuals, except sometimes, as in this case, it becomes necessary to do so because they are part of the historical content that I believe this Court is facing, and that the Court in Alabama addressed itself too. With that language in the Alabama case in mind, the question arises to what extent have we made progress in Texas in resolving our inner group relationships, in doing away with what we all know were historical discriminations, both as to the black and the Mexican-American.

Argument - Idar

Have we not reached a plate in our society in Texas where this issue is no longer cognizable by the court? The mere fact that the black is no longer a slave or the mere fact that our Constitution and statutory provisions that placed him in the subservient position, as far as our schools, for example, are no longer the law, and other similar situations affecting the Mexican-Americans, have we not reached the point where a court must no longer consider discrimination as it relates to a particular group? That is one reason why we felt it necessary to point out to the court, and we hope to file a post-trial memorandum reciting the cases we are concerned with, because these are all recent cases within the last year or two where the Federal Courts have set aside official practices and official statutes that the State of Texas has pursued that have affected these groups that we are concerned with. Now, Your Honor, to get to our case, I think the evidence is clear out that that exhibit over there, that broad area there taking the Mexican-American on the

R COPY

west side of San Antonio and the other area taking into the east side, that is a tremendously large portion, geographical portion, of the City of San Antonio, and it encompasses a very substantial -- I guess it encompasses half or better of the population of this city. And, the record is clear out that only five people, I believe it is, has run -- or rather only five Mexican-Americans have been elected to this Legislature from Bexar County in the period of time reflected by the evidence. Now, I would like to point out to the Court that at no time did we make an effort to show that a Mexican-American living outside of that area might not necessarily be a good representative of the people, nor for that matter would an Anglo not be a good representative on behalf of these people. Our point is, however, that these people within the area itself are the ones that require the representation, that they need somebody who is living in their midst who understands what their problems are, who can be their advocate before the Legislature. Perhaps if they had

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POOR C

that type of representation in Bexar County and other groups in Nueces and Dallas and Fort Worth and elsewhere had like representation, some of these issues could be resolved in the Legislature and the Federal Courts might not have to face up to them time after time after time as has been happening in the recent history in this country. We felt it necessary for the purposes of showing the needs of the people in that area to introduce evidence relating to the educational, socio-economic health and other problems that are facing the people in that area. The question arose, are we going to polarize the community by drawing district lines in such a way that blacks or the Mexican-Americans are going to get three or four representatives? To what extent is that going to hinder their working as a team? Well, I think we would be very blind if we don't recognize that our country is facing a very serious situation, particularly in our metropolitan areas -- not just in Texas but nationally. That the people, the core

R COPY

cities, are becoming black or Mexican-American or Puerto Rican -- it depends on where you are -- that the white population is fleeing to the suburbs but they are still retaining control of the basic institutions that provide the life of the community. This is creating disappointments and frustration on the part of people living in the core cities, which could easily be resolved, I believe, if they were given a measure of representation. If they had a representative and they knew who he was and lived within a few blocks of where they live, one that would almost go house to house in his campaigning, he could practically do that in a single member district. And, while on this point I might as well point out, as far as we are concerned through the testimony that we presented to this Court, we have not advocated either in that manner or in our pleading that the districts be set up designed specifically to give the Mexican-Americans any particular amount of representation. We are simply asking the petitions that the plans

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POOR C

that have been adopted or diluted and minimizing and cancelling out his voting strength. I would like to allude very briefly to one or two other points that I believe Mr. Richards, I believe, touched upon. And, that is the question of whether we had a rational State policy. Very briefly, in 1965, under the policy that Mr. Richards alluded to, Harris County was given three districts that I will term "many multi-member districts" since they contained six or seven districts apiece, and that was supposed to be the State policy. Now, in 1971 Harris County gets twenty-three, the other metropolitan areas, Dallas, Bexar particularly, continue to get the multi-member district -- particularly Dallas, who is now one million three hundred thousand or better. Both, I believe, Mr. Barnes and Mr. Spelling in their depositions testified that they did take into consideration, as far as the House districts in Harris County, the question of race. Why didn't they do likewise in Dallas

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and Bexar? Why is it that we wind up with a crazy quilt Bexar redistricting plan State-wide that, to begin with, to every citizen outside of Harris County -- and I am talking about blacks, blacks and browns and everybody else -- is being denied the same effective voice that a citizen in Harris County that may reside in only a small district with seventy-four thousand people is going to receive. On the other hand, we also have this other situation that I think the Court is aware of, our present plan results, in effect, in recognizing race as a factor in Houston and resting to, in fact, recognize the constitutional requirement that you shall not dilute in an election it but failing to do likewise in Dallas or Bexar where you also have sizeable minority groups -- the blacks and the Mexican-Americans.

ANDERSON - Idar 1110

I believe that this plan has created a new situation. We now have, I suppose, some kind of triple-fused discriminatory pattern in here. We are discriminating by giving the blacks in Harris County but denying the blacks in Dallas single member districts. We are minimizing their voting strength in Dallas, while recognizing it in Houston.

The same thing applies to your Mexican-American. I don't believe that I need to belabor the evidence that relates to the cost of campaigning. That should be fairly self-evident to anybody that is cognizant of our modern-day campaign costs.

I would like to comment very briefly on one point that Mr. McDaniel cites, the fact that the Mexican-American may now be on an equal basis population-wise with the Anglo-American in Bexar County.

It is a factor they have equal political effectiveness and equal and effective voice in the selection of legislators from that town.

I believe that Dr. Cotrell, the expert that we brought before this Court -- now, Mr.

OR COPY

Richards mentioned something about -- or somebody -- I guess it was Mr. Mullin -- that Dr. Murray was hardly challenged in his testimony. Not a single question was asked of Dr. Cotsonis. He pointed very clearly, I thought, that this example that simply because two groups are equally balanced population-wise, two groups in the context in which we have the Anglo versus the Mexican-American, that it is a factor that gives them an equal value. We are ignoring all these other factors that have affected the Mexican-American, the drop-out rate, the no educational achievement, the language factor, any number of other conditions that are reflected by the evidence that we have brought before this Court.

If they were on the same footing as the Anglo-American population, had the same median income or the same education generally, I would then say, "Yes, balance them on the basis of so many heads over here (indicating), so many heads on the other (indicating), and we have a situation that we don't need to concern ourselves with."

POOR C

The last thing that I would like to touch upon, Your Honors, is the fact that the single member districting plan, I believe, fits closest to that concept of government that I believe we all believe in, that that government is best that is closest to the people.

Now, if we had an urban type society like we have in this country, if we didn't have these tremendous metropolitan areas, the cities, perhaps a two or three or four multimember district would be justifiable. In fact, the Court, I think, may be wondering about that, judging from one of the questions.

Yes, we do have some multimember districts with two or three representatives. Perhaps we may not have yet reached the point populatism-wise in those particular districts to think about giving them single member districts. I certainly don't want to advocate that at this point, but I think I recognize what the Court has in mind when he raises this question, but, certainly, regardless of what we may conclude as to these two or three

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multi-member district counties, I believe that the same thing does not apply to one that has 11 representatives, as Bexar County, and another one that has 18, as Dallas County.

With that, Your Honor, we rest our case.

JUDGE WOOD: May I ask one question?

MR. ZIMMERMAN: Yes.

JUDGE WOOD: I notice you distinguish -- and I must admit -- I have only had an opportunity reading all the depositions and keeping up with the daily copy -- to read the Alabama case only once, which is a very recent case, but I notice -- and I see why you brought in the evidence that you are relying on the statement in the case that comments on the fact that Alabama has had such a miserable racial history, but isn't that actually -- isn't that racial history apparent in the case itself where the mal-apportionment has existed in Alabama in virtual contempt of Federal Court Orders for over 11 years and where the Alabama Legislature has supposedly during the last six years, a concerted effort by the Federal Court -- in violation of those Orders has refused to come

up with a plan as late as October of 1971, and admittedly, the plan that they finally did come up with was obviously unconstitutional in that it deviated on the basis of population -- one man-one vote. Even in spite of this, the District three-man Court said that it was reluctant, even under these circumstances, to intrude on the activities of the elected legislators.

Now, in this particular case I think the position of the State of Texas is that they have -- they do not have any such bad history of race, that they are trying to come up with a plan that is reasonable.

Isn't that the position of the State? Are these distinguishing -- now, as I say, I haven't had an opportunity to study the Alabama case in depth, but this is the way I am -- I can distinguish that case from this.

Now, if I am in error, correct me.

MR. IDAR: Your Honor, I am at the same disadvantage. In fact, I read this case while I was listening to the argument from Counsel for the State. Of course, I don't think any of us have had much of an opportunity

OR COPY

Alabama - Idaz

to analyze it, but I am intrigued by the sentence that says, "Secondarily, we do note that Whitcomb comes in Indiana, a state without the long history of racial discrimination evident in Alabama."

Now, the question arises whether by using the term "history of racial discrimination" the Court is talking only about the history of redistricting in Alabama or whether it had in mind other history of discrimination.

JUDGE WOOD: Admittedly, the parties in the case representing the State of Alabama admitted that this mal-apportionment had existed for a period of 11 years in virtual contempt of all the Orders, repeated orders of the Federal Court, refused to do anything about it.

MR. IDAZ: I recognize that.

JUDGE WOOD: I think it was certainly reasonable that the Court came up under these circumstances with that plan, with some plan, when they refused after 11 years to do something about it.

MR. IDAZ: I recognize that, but I

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would again point out, Your Honor, that I am not certain whether by the use of this phrase the Court is simply talking about the history of the redistricting issue in Alabama, or whether it was referring to---.

JUDGE WOOD: Thank you. I don't know.

MR. IDAR: And let me just conclude again by saying that it is a matter of degree in Texas. We all recognize that we have made some progress. The fact remains, have we reached that point that the Courts must no longer take these factors into consideration as they apply to the Mexican-American or the black?

JUDGE WOOD: Thank you.

MR. CROSCH: May it please the Court, the Republican Intervenors in the Dallas and the Tyler cases would submit that, as I stated at the outset of our case, that we do not contend and are not urging that this Court overrule the Legislative Redistricting Board's Order and declare it unconstitutional because it did not give the Republicans some seats

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in the Legislature. We recognize that we come under the burden of Whitcomb v. Chavis. We think the legal principles of that case clearly would support our position that this statute or this Act of the Legislative Redistricting Board is unconstitutional insofar as it relates to Dallas County.

As the testimony has clearly pointed out, there is an area in Dallas County which has a population of 261,000 persons, who have consistently voted for, expressed a preference for Republican legislative candidates. They have consistently voted for and elected Republican State Senators, Justices of the Peace, Congressmen, overwhelmingly voted for all the Republican candidates -- or Republican candidates for state-wide races, U. S. Senate, Governor on down the ticket. They have elected a Republican County Commissioner since 1960.

Now, interestingly enough, when Mr. Jaworski read the Chavis case, he left out one very salient portion of that opinion.

Chavis, according to the State, would hold that you could never challenge the State on

the question of multi versus single member districts. Yes, we do think the burden is great, but Chavis clearly pointed out, "We have deemed the validity of multimember district systems justiciable, recognizing that they may be subject to challenge, when the circumstances of a particular case may operate to minimize or cancel out the voting strengths of racial or political elements of the voting population.

"Such a tendency, we have said, is enhanced when the district is large."

This Court is called upon to interpret what is a large district. Now, as is evident in the Chavis opinion, Marion County had a population of 741,000 persons. The Court had before it that size district. They specifically upheld in the Hawaii case, the Fortson case, the multimember districts where they had requirements that the representatives live within geographic areas, but even there, the whole population of the state was only 769,000. Each individual representative was charged with representing approximately 15,000 persons. A district half the size of the state, a multimember district which

Included half the white would have only been 300,000.

Now, in this case we contend that this district, the size of this district, with a million and three hundred thousand persons, tends to cancel out and operates to minimize and dilute the voting strength of those 300,000 persons, and we would say that it is by effect -- the effect of it is such that if you look at the voting history, and as the witnesses have testified from 1966 to 1970 Republicans have been elected. Voters have expressed preference for Republican candidates, except for the State Legislature, and they are precluded from doing so in Dallas County.

By design, certainly, when you look at the entire State plan, because of the distinction and the difference between Harris County. Interestingly enough, the only testimony or the only rationale submitted by the State that can be gleaned from the depositions is that, "We thought the people of Harris County wanted single member districts, but we thought the people of Dallas County wanted a non multimember

POOR C

district," and yet, the evidence is clear that the polls show the people of Dallas County voted single member districts, favored single member districts, expressed a preference three to one.

The tendency to dilute gets greater, as the Courts said, when the district gets large. Now, our burden would be extremely difficult if the State had announced some guidelines as saying, "All counties over a million people or all counties over 500,000 people, we would break the counties up, but we would keep the smaller ones in a multimember district," but in this case where we have one large county for what seems to me from the testimony presented a very obvious purpose, because it takes the -- and Mr. Jaworski, I might say, is concerned about what constitutional principle is involved. Certainly, if the right to vote is not one of the most precious constitutional principles that we have, I don't know what is, and certainly, the right to vote involves more than going into the ballot box and pulling the lever of a voting machine or in casting a vote for one person

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on the ballot. In insuring an effective participation in the political process, a reasonable opportunity to become a candidate, a reasonable opportunity to have something to say about who is going to be a candidate.

Certainly, if by state action the State an discriminate candidates from offering themselves to run for office, candidates that the voter wants to vote for, then they effectively don't have the right to vote for the they choose, and certainly, I am appalled, really, as I heard some of the testimony about the prognostications for the future about the powers that be to get together and decide, "We will have three blacks in the next election. We will have one Mexican-American on the ticket." That is taking it out of the hands of the 71,000 people.

Let's let the people decide who is and effective representative for them, and let's let them make their choice just like the people of Harris County can having the right to make their choice. The State alludes to the fact that in Harris County Senator Barbara Jordan

ANSWER? - Crouch

1122

stated that there were five safe seats for the Negroes.

(No omission here.)

Now, that, in itself, is an indication that they will have the right to participate in the election process. Certainly the citizens of Dallas County are denied that opportunity because primarily of its size.

Thank you.

MR. COX: May it please the Court, at the outset of this matter, as Judge Justice will recall, I attempted to obtain a stipulation to the effect that it was more expensive for a candidate to run as a candidate in a multi-member district than in a single member district; that accountability on behalf of a candidate, both upward and downward to his constituents, was more difficult in a multi-member district than in a single member district; and that there were no objective criteria by which one basic plan of representational government, representative government, should be applied to Dallas County and another to Harris County, and I was unable to obtain that stipulation.

I think it has now been established that all of those things are so. I do not believe there has been any evidence to the contrary of any

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significance on any of those points. There is no difference between Harris County and Dallas County of any significance, except that partisan political considerations. Two different plans of representative government have been applied.

Now in representing the Republicans, and I think perhaps to this extent at least, I can speak for the other minority groups before the Court, I would say that we certainly have no right to use our minority status as a sword or to urge that we are entitled to some special privilege or some safe district or to elect candidates. Of course, we are not entitled to that. But I think we are, to some extent, may it please the Court, entitled to use it as a shield.

In the Abate case, which has been referred to at considerable length, the Court, itself, the Supreme Court, states that the plan which it was approving, a local plan, by the way, does not contain a built in bias tending to favor particular political interest or geographical areas.

I would suggest to the Court with

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suggest that there are simply too many fish in this bubble of milk. When a witness put on the stand by the State can testify as to Senatorial District 22, it appears to him to be an over instance of political gerrymandering, when maps pulled into evidence, Exhibit 9, placed in by us, prepared by the County Clerk's office in Dallas County, Texas, are mailed to the legislature, prior to the legislature attempt to Lasperation the state, showing the voting patterns in their areas so that those can be taken into consideration, presumably in voting upon the plan, I would suggest to, may it please the Court, that viewing one election confers untimely enough benefits on the successful candidate. If we stop short of placing him in a position to insure that he will win all the future elections as well by permitting him to gerrymander do that his political opponents are effectively reduced to a status of no hopes.

No more on the subject of gerrymandering. I want to pass to the second point, which I would like to make.

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POOR C

There is, as I have said, no evidence to show any objective difference between Harris County and Dallas County in this case. I have asked these questions over and over of several witnesses, perhaps too frequently, thinking that at some time, perhaps, the State would see fit to come forward with some showing that there was a reason for this choice of a different representational system for the two similar situations. All ready, as has been noted earlier, characterized by the State, itself, it is similar. "When the metropolitan county goes over a million, we will adopt a single member districts." Well, this has not been done.

A great point has been made, if I may diverge for just a moment, and I am almost through, of the fact that the State feels itself to be in sort of a melee here -- a scene and got it -- position. I would suggest that the State is incorrect. Quite aside from that Mr. Nichols stated earlier about where the [illegible]

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are placed in issue, in the Alabama case, which I suppose is best called Sims versus Arnold, the court characterizes, and I think correctly, the decisions of the United States Supreme Court on this issue, I think at pages eleven and twelve. The third basic principal is, "Any deviation from the ideal of one man-one vote must be justified by the State as fostering the effectuation of a legitimate State policy." Where, if I may ask a rhetorical question, is the legitimate State policy? We have not seen it, or if we have, it has certainly passed by me in the night.

I will say no more on that subject. I do want to say a word about population deviation.

The State seems to have suffered the fate which Mr. Justice Marshall feared it would suffer when he stated in it that the 11.9 percent was not to be taken as a permissible criteria, and in the other pronouncement of the Supreme Court, where it is stated over and over, the ideal is one-man vote and anything

different from that must be justified. Here we have what amounts to an admitted ten percent deviation, or 9.9 percent, in a State districting situation. Now in the Abate case, the court emphasizes that this was a local governmental situation within a county; that peculiar situations of interlocking function were and always have been in this county, and even there, 11.9 percent was all which the court was willing to accept and it is emphasized that nothing beyond that was to be taken as approved in any way, nor was this to be taken -- in fact the court stated that in the legislative context, it was dubious that even such a deviation as that would be appropriate.

I don't know how to answer Judge Wood's observation about the 11 years forbearance by the Alabama Court, except to say that if we are presently embarking upon an 11 year effort, it is well that we commenced when we did.

The Legislature of Texas seems to be unable to produce a constitution plan. One effort has already been made, and if I may say so, the plan which was invalidated by the Supreme Court of Texas was not only unconstitutional; it was ludicrous. I invite the Court's attention to it.

Another effort has now been made. It is an honest effort to ride the Abate Case as far as it possibly can be ridden, to gerrymander the political interest of the State whenever this can be done, and I suggest, and Dr. McClosky testified, that the situation in Texas is far closer to the situation in Alabama than it is to the situation in Indiana, and that is the only testimony in this record on that subject.

MR. BAKER: Briefly, in

Argument - Bason

concerning the San Antonio Republican case, we feel that the evidence will show that the witnesses, the expert witnesses, all of whom were put on by other parties to this suit, testified relatively to the same things in Bexar County as to being existing in Dallas County, and in regard to the problems involving multi-member and single member districts, as to cost, the closeness of the candidates to his constituency, the identifiable areas, et cetera.

The San Antonio single member district Legislative Plan has been -- or legislative problem, has been met pretty well by the others, and I won't dwell on it.

As far as the Senate districts 21, 19 and 26, which are the second basis of our suit, we used Wes Ambler, as a witness who testified as to the areas with various exhibits. And the State used three witnesses; Mr. Ray Barrows, Gilbert Garza

Argument - Brown

and Representative Hilbey. I thought Secretary of State Ray Bowman made an excellent witness and fact-wise, all three of these gentlemen stated that in their opinion, there was no community of interest between the southeast portion of San Antonio, the north part of Bexar County, and the lower part of District 21 around Starr, Jim Hogg, Duval and Zavala Counties.

My recollection of the testimony is that Mr. Bowman volunteered that he could not imagine a district being drawn that would have less community of interest. Mr. Bowman and Mr. Hilbey each favored single member districts. Mr. Bowman stated, as I recall, that in single member districts, they would have one or two Republicans and two Mexican-Americans and one Negro, and each of the men testified along those lines.

They all stated that they did not feel that the District was compact.

I would like to say a few words in

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POOR

response to the allegations of the defense. In attempting to meet the constitutional requirements and to differentiate between the instant cases and the Chavis case, my interpretation of the Chavis case, as set out in my trial brief, is along the lines that was just pointed out by one of the other counsels, in that it would be disturbed -- the redistricting would be disturbed only upon specific proof that the adopted scheme of districting is actually functioning in a manner that minimizes or cancels out the voting strength of the cognizable, racial or political elements of the voting population. If this be the test, I think the record is replete with distinctions between the instant cases and the Chavis case.

I feel that there have been many witnesses and much testimony which will show there has been a minimization, dilution or cancelling out of the votes

R COPY

Argument - Rogers

in both Dallas and Bexar County, or possibly elsewhere.

Mr. Odemenik made a point a while ago to the effect that the Mexican-Americans was not a minority and that they had selected State Representatives. Now, I don't know whether it was because of oversight or whether he didn't feel that it was worth mentioning, but I feel that the Republicans of Bexar County are a minority and they have not elected a State Representative. And as I understand the Chavis doctrine to be, where the voting strength of a cognizable, racial or political element of the voting population -- there is much testimony to the effect that there is an identifiable Republican area in Bexar County and in San Antonio.

I will finish by stating the rest of the testimony I think speaks for itself. I implore the Court to read with particularity some of the depositions which I know that they will,

POOR

upon which a large part of our case is based.

It is my opinion that the time element that the Redistricting Board had was a great deterrent in putting enough attention, supervision, control, direction and interest by the Board members in the actual drafting of the plans.

OR COPY

It was testified to on more than one occasion that it would be practically impossible to have put single member districts into the various metropolitan areas in the time prescribed. This was by the man that drafted the plan. He had almost no direction, supervision or control or even interest on the part of the members of the Board.

I will end by saying, I know it has been a hard deal for all of us and to use Mr. Idar's mention while ago about the plateau that we have arrived at, I just hope that we have reached a civilization plateau of understanding and fair play that not only dictates one man-one vote, but one brown man-one vote, one black man-one vote, and God willing and this Honorable Court willing, even one Republican-one vote.

(LAUGHTER)

JUDGE GOLDBERG: Have we constitutionally exhausted ourselves at this point? Is there anyone else who wants to be heard?

(REPORTER'S NOTE: There was

POOR C

no audible response.)

JUDGE GOLDBERG: If not, the Court will take a 15-minute recess, and then we will return and discuss what we will expect of you.

(REPORTER'S NOTE: The Court then, at 2:55 o'clock, P.M., January 6, 1972, recessed until 3:15 o'clock, P.M., the same date, at which time it reconvened.)

JUDGE JUSTICE: Please be seated.

JUDGE GOLDBERG: I think it goes without saying that the Court is truly indebted to everyone for the cooperation and your night-and-day work to bring this case to the status in which it finds itself today, and we are deeply, deeply grateful and appreciative, and without that cooperation, why, we would not have been able to discharge our constitutional mandate, and I want everyone to know that we each of us shall long remember that

OR COPY

you were a great help to us. 1137

We realize that you have worked very hard, worked continuously, worked into the night. What I am going to suggest now will probably call for some more -- I hate to ask more of you, but I really don't know what to do except to ask for your continued cooperation for the next period of time, if we are to live under the constitutional mandate that I know every one of you wants us to measure up to and fulfill.

We have had three days of trial. You have had hundreds of exhibits, numerous depositions. We have had countless theories. We have had confusing precedents. We have had everything that goes into a trial that sometimes takes months.

We are going to ask each and every one of you to prepare and file, one with the Clerk and a copy to each of our home stations, to be filed not later than tomorrow week, the 14th, a brief or a memorandum which will comprehend what happened in this courtroom for the past three days, giving us the benefit of your wisdom, your knowledge and everything

that you can bring to the case, suggest to 1138
us proposed Findings and Conclusions which you think are impelled by what has happened in this courtroom during the past three days---.

JUDGE WOOD: Four days.

JUDGE COLEMAN: Four days.

I am going to make a further suggestion that those of you who are dissatisfied -- but, first, those of you who are dissatisfied with the redistricting plan as it now exists give us the benefit of how you think a plan should be devised that meets the constitutional requirements.

The State of Texas, without even the slightest prejudgment, if you feel that even if we should be mistaken, we can make a mistake, could come to a conclusion that perhaps that is a violation here or there. Even though you think the plan is impregnable, that every aspect and in every respect, if you feel that you can help us by suggesting by whatever preamble and caveat you want to start with, "why we think it is perfect, the following would be our suggestions, if in your own wisdom you should think otherwise," because

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we want the benefit of whatever thinking you might have.

I don't want to put you under the compulsion of submitting such a thing with the idea that you are suggesting that there is anything wrong. On the other hand if we only receive plans from the other side, and we should put them into effect, we would not have the benefit of whatever criticisms or suggestions you might have.

On the other hand, if we waited to see their plans and then submitted them to you and asked for more time, we would still be running into the time factor that has been plaguing us throughout this entire trial, and I want you to clearly understand that if you did suggest anything that it would be with the complete understanding that you are not suggesting that there is anything wrong constitutionally with what has been done.

I know this is an onerous burden. I hate to place it upon you, because you are busy men with many, many things to do.

This is an important case and one

POOR CO

of the most important that I have sat on since I have been on the bench, and each of us here feels a very keen responsibility that what we do will affect the political processes of this state, and there is one thing we want to be certain about. We want to be right. We want to be fair. We want to be just, and we solicit your help and support in helping us come to that result. 1140

If there are any questions, I will try to answer them.

MR. IDAR: Your Honor, I would like to call one matter to the Court's attention.

During the noon recess that long awaited information from the census reached the Clerk's Office. This is the census relating to Bexar County for 1970, which presumably has demography data and breakdown by ethnic population as it relates to the Mexican-American. It has been in the custody of the Clerk and the Court here since it arrived. It has a cover letter from an official of the Census Bureau. Mr. McDaniel is aware of it, and at this time I would like to tender it in evidence in the

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hope that the Court can derive some benefit 1141
out of that information, assuming that it should become applicable in the eventuality that a plan was to be looked into with the purpose of redistricting that particular county, at least.

(REPORTER'S NOTE: The Court here confer out of the hearing of the court reporter.)

JUDGE GOLDBERG: I understood that this was to be admitted subject to any written objection that you wish to make to it. Is that right, Mr. McDaniel?

MR. McDANIEL: Yes, I have no particular objection to this particular information. It is census information, Your Honor. I was going to suggest to Mr. Idar, because I know that he got it today, and I suspect this is the only copy that he has, that rather than submit it to the Court now, with the Court's permission, we might retain it in our possession and file it with the Clerk tomorrow and have it copied in the interim.

POOR

MR. IDAR: That's perfectly all right with me, Your Honor. 1142

JUDGE GOLDBERG: That will be just fine. I think that is an excellent suggestion.

MR. IDAR: Shall we mark it as an exhibit, EI-21?

JUDGE GOLDBERG: In order that everyone may have our home stations, I want to ask Judge Justice to give you his address.

JUDGE JUSTICE: My address is Post Office Box 330, Tyler, Texas, 75701.

JUDGE GOLDBERG: Judge Wood?

JUDGE WOOD: Mine is Post Office Box 1849, just like your tax return, San Antonio, 78294.

JUDGE GOLDBERG: My address is 1100 Commerce Street, Dallas, Texas 75202.

Is there anything else anybody wants to add?

MR. CLOWER: May it please the Court, we have one further matter, and that is the Order under Rule 23 for the class action.

JUDGE JUSTICE: You may submit it to me in Chambers.

OR COPY

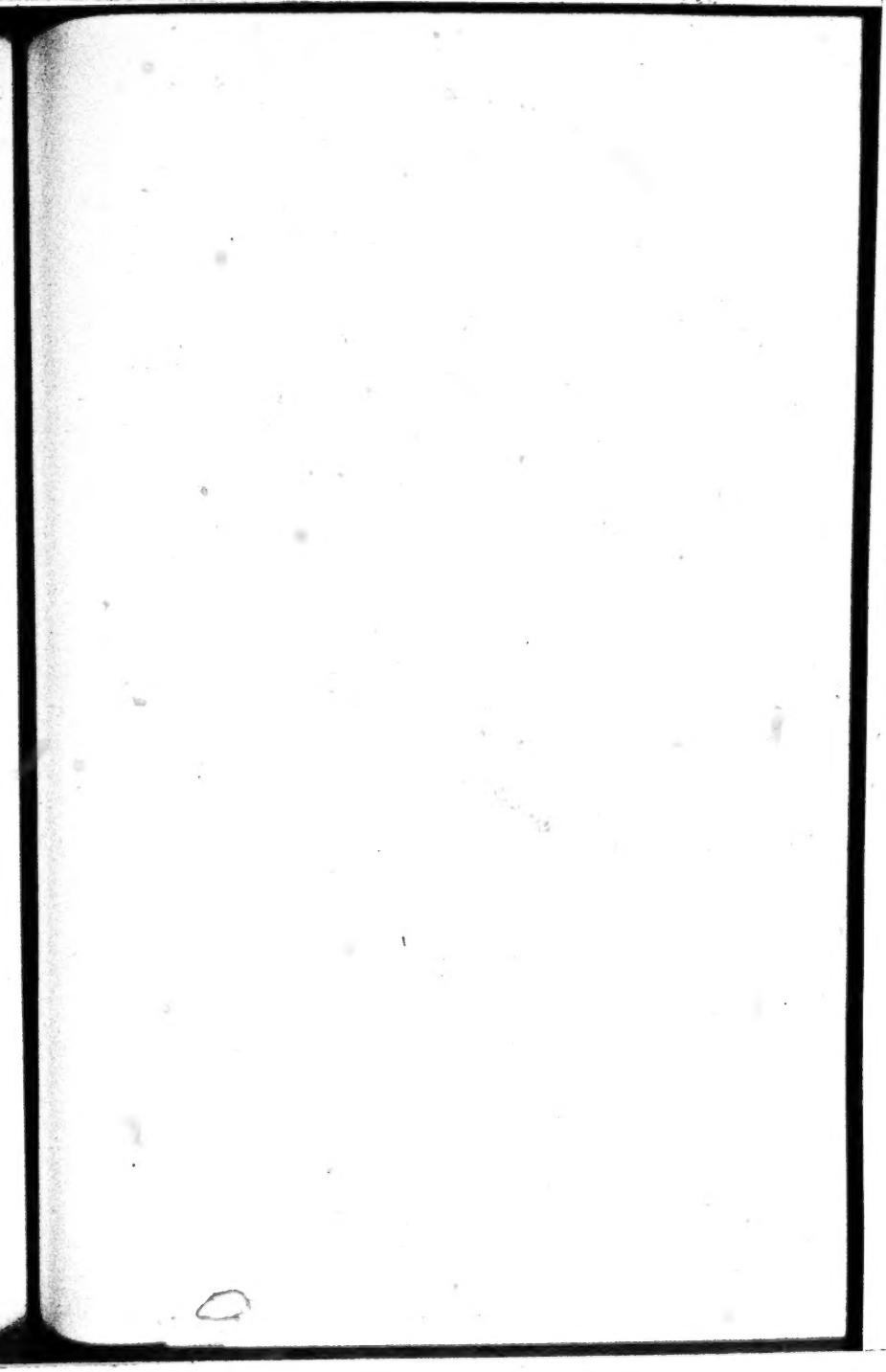
MR. GLOVER: O. K., fine. I just 1143
didn't want everybody to get dispersed.

JUDGE ARMSTRONG: Once again, our sincere thanks and appreciation.

The matter is taken under advisement, and we stand adjourned.

(REPORTER'S NOTE: The Court then, at 3:26 o'clock, P.M., January 6, 1972, adjourned.)

. . . . . .



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Holmes

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES ET AL
VERSUS CIVIL ACTION NO. A-71-CA-142
BEN BARNES ET AL

DIANA REGESTER ET AL
VERSUS CIVIL ACTION NO. A-71-CA-143
BOB BULLOCK ET AL

JOHNNY MARRIOTT ET AL
VERSUS CIVIL ACTION NO. A-71-CA-144
PRESTON SMITH ET AL

VAN HENRY ARCHER, JR.
VERSUS CIVIL ACTION NO. A-71-CA-145
PRESTON SMITH ET AL

APPEARANCES:

CIVIL ACTION NO. A-71-CA-142, CURTIS GRAVES ET AL VERSUS BEN BARNES ET AL

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VERSUS BOB BULLOCK ET AL

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ATTORNEYS FOR DEFENDANTS
STATE OF TEXAS ET AL

ANSWERS AND DEPOSITION of MR. ZAN WESLEY HOLMES, JR., produced as a witness at the instance of the Defendant Roy Orr, taken in the above styled and numbered causes on the 31st day of December, A. D., 1971, at 4:30 o'clock p.m., before Linda Kidd, a Notary Public in and for Dallas County, Texas, at the offices of MULLINAX, WELLS, MAUZY & RAAB, INC., 1601 National Bankers Life Building, in the City of Dallas, County of Dallas and State of Texas, in accordance with the agreement hereinafter set forth.

LINDA KIDD
CERTIFIED COURT REPORTER
NO. 0-0241
DALLAS, TEXAS

AGREEMENT

It is hereby agreed by and between the parties hereto that this deposition is being taken under the same agreement that was adopted and made a part of the depositions of the Members of the Redistricting Board that were deposed this week.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that the Notary Public taking this deposition may return and file the same without the signature of the witness thereto, said signature of the witness being waived by all parties, and said deposition to be used on the trial of these causes with the same force and effect as though the same had been read and signed by the said witness.

MR. ZAN WESLEY HOLMES, JR.,

a witness named in the annexed agreement, being of lawful age and being first duly cautioned and sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. LUNA:

Q There are some questions that I will ask you that will be obvious to those of us at the table but we are making a record so that the Court can read it later on and determine what went on here. First of all, what is your name, please, sir?

A Zan Wesley Holmes, Jr.

Q And where do you live?

A 6910 Robin Road, Dallas, Texas.

Q And where is that? What part of the city?

A That's in Northwest Dallas.

Q Northwest Dallas?

A Right.

Q Would you tell us first of all what is your age?

A I'm thirty-six.

Q And secondly, what is your business, occupation or profession?

A I'm a Methodist minister, District Superintendent in the United Methodist Church.

Q In addition to being a Methodist minister do you hold a particular job within the church other than as --

A I'm --

Q Go ahead.

A I'm a District Superintendent of the Dallas Metropolitian District of the United Methodist Church.

Q How many churches do you have under your supervision in that district?

A I have twenty-nine.

Q And approximately what number of people within the membership of the total of those twenty-nine churches?

A The total district membership?

Q Yes, sir.

A I would say approximately twenty-five thousand or more.

Q What area does the district cover?

A Actually all over Dallas County and Mesquite, Garland, Richardson.

Q Rev. Holmes, do you hold an elective office?

A Yes.

Q Will you tell us what that is, please, sir.

A I'm a member of the House of Representatives, Texas House of Representatives from Dallas County.

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Q For the purposes of our record would you tell the Court what color you are?

A I'm black.

Q Would you give us the benefit of your educational background?

A I finished high school.

Q Where?

A In Austin, Texas. Huston-Tillotson College in Austin, Texas and Perkins School of Theology at Southern Methodist University, two degrees, BD and Master's, Second Theology and that's it.

Q When did you first become interested in politics to the extent that you decided to become a candidate for public office?

A In 1968.

Q In what way did you manifest that interest? By that I mean what did you first run for?

A I first ran for the Texas House of Representatives.

Q And was that shortly after the death of Representative Joseph Lockridge?

A Right. That was shortly after his death, to fill his unexpired term.

Q And that was in a special election?

A In a special election, that's right.

Q Rev. Holmes, do you remember whether or not while you were a candidate in that special election, that before the special election was held the Democratic Executive Committee of Dallas County either (a) chose you as a Democratic nominee in the general election or (b) endorsed you in the special election?

A Would you repeat that question?

Q During the interim between the time you decided to be a candidate in the special election, beginning at that period and to the date of the election, during that period, do you recall whether or not the Democratic Party did either one or both of the following things through its Democratic County Executive Committee, either (a) selected you as a Democratic nominee for the general election in November or (b) endorsed you in the special election?

A I recall that they did both. It's my understanding that this is what happened.

Q They did both. Now, in addition to that action by the Democratic Executive Committee of Dallas County did a number of other organizations also endorse you?

A Yes.

Q And individuals?

A Right.

Q Both black and white?

A Right.

Q And I assume perhaps some browns?

A Possibly, probably.

Q Of course sometimes we don't even know who all the groups are that endorse us, do we?

A That's right.

Q Rev. Holmes, there has been some testimony here today that one of the groups that endorsed you was a Democratic Committee For Responsible Government. Are you familiar generally with that name, an organization?

A Yes.

Q As a candidate for public office or as a public official, after being elected, you don't agree to be bound by or controlled by the Democratic Men's Club of Dallas County, the Democratic Women's Club or the Democratic Committee For Responsible Government or any other organization, do you?

A No. Right, I don't.

Q And although the D.C.R.G. was one of I assume many organizations that endorsed you, was it not?

A Right.

Q Has that organization or any other organization tried to dictate to you how you ought to vote?

A As an organization, no.

Q Of course individuals from all segments --

A I have had individuals.

Q -- of the neighborhood I assume have talked to you?

A Yes.

A About trying to get you to vote one way or the other?

A Right, right.

Q And maybe some individual trying to get you to vote one way and the other one the other way on the same bill; have you had that experience?

A Yes, on occasion, different organizations.

Q Rev. Holmes, by this series of questions I don't want to ask you to be immodest or indicate that you are by the asking of them but I think they are facts that have been stated by many other people and we all recognize and I want to see if you agree with this: First of all you are a person that is well accepted, perhaps not unanimously, but exceedingly well accepted as a representative of the black community by the black community; wouldn't that be a fair statement?

A I would like to think it's fair.

Q Well, as I said I wouldn't want to ask you to be immodest but others have already said that today.

POOR COPY

including Senator Meany and I, I think we both would agree. In addition to that don't you believe it would also be fair to say that you are much more than reasonably well accepted by other segments of the community in addition to the black community?

A I don't really know how I could answer that. I would like to think that were true but I really have no way of knowing whether or not I am accepted. I couldn't answer that.

Q Well, at least we know they voted for you, don't we?

A Yes, a number of them did.

Q And when we have had a contested -- By the way, how long has it been since you have had a contested race?

A Last November of '70.

Q Who ran against you in November of '70?

A John Cole.

Q John Cole.

A Right.

Q Was he black or white?

A He was white.

Q And didn't you then beat John Cole in most white precincts in Dallas County?

A I believe so. I'm not -- as far as I can

remember I did.

Q So if we talk about acceptance meaning voting for you then you have been more than reasonably well accepted and repeatedly?

A Yes, if that's what you mean by acceptance.

Q And you were elected at-large?

A Right.

Q Rev. Holmes, would it be fair to say that prior to the time you were endorsed by the Democratic Executive Committee that a group of people that might well be called black leaders had talked with you and after talking with you had recommended you as a candidate to the County Democratic Executive Committee?

A That's true.

Q And is that the reasonable way that politics works?

A I don't know.

Q That's the way it worked in your case?

A That's the way it worked in my case. Let me say -- yes, I just know it worked in my case. I don't know if it has worked in other cases.

Q Now, on the other hand, do you know a man named Clay Smothers?

A Yes, I do.

Q Did he run in the general election on one or

POOR COPY

more occasions when you were running as a candidate?

A Yes, on one occasion.

Q What year was that, if you remember?

A That was 1970.

Q What ticket was he running on?

A He was on the Republican ticket.

Q And he was defeated, wasn't he?

A Right.

Q Do you know a black man named Joe Curvent?

A Yes.

Q Did he also run one or more times in the general election and in a party primary?

A Yes, he ran one time.

Q What party primary did he run in?

A The Republican.

Q I say run in. They don't hardly ever have any opposition, do they, in the primary?

A That's true.

Q So I guess he was uncontested in the primary, was he not?

A No, I think he had an opponent the first time around.

Q And then in November he ran as a Republican nominee, right?

A Right.

Q And he was defeated?

A Right.

Q Now, as far as a personality is concerned and a candidate, he was an attractive candidate too, wasn't he?

A I think so.

Q If you were going to -- this may be over-simplification but at least in that election most of those who were elected in November were Democrats, were they not?

A That's right.

Q So if you were going to assign one reason as being -- one of two reasons as being the major reason for his being defeated, which of these two would you say had the most to do with it if you could give that kind of an opinion, his being black or being a Republican?

A I think being a Republican in this particular instance. It's hard to really distinguish between the two. Really it is.

MR. LUNA: Off the record.

(Whereupon an off-the-record discussion was held, after which the following proceedings were had:)

Q Rev. Holmes, do you know of any instance

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where any citizens, black, white or otherwise, have had their rights of registering to vote interfered with in let's say the last five years?

A Depends on what you mean by interfered with. I consider the poll tax a way of interfering.

Q I've forgotten when we did away with the poll tax. I was trying to relate it to after the poll tax.

A After the poll tax?

Q Yes.

A I have known of instances where it was difficult to get voter registration certificates in large enough number to carry on door-to-door registration campaigns in the black community. We eventually got them but I have suspected some difficulty at times in actually getting the full cooperation of -- from some officials in getting these supplies but apart from that, no, I don't know of any other instance.

Q And you know of many people in Dallas County, many leaders, and to name just a couple, you and Senator Mauzy, who sit at this table, who have made large efforts to encourage people to register to vote and to make door-to-door campaigns to get them to register, have you not?

A Right.

Q Do you know Mr. George Allen?

A Yes, I do.

Q What color is Mr. George Allen?

A He's black.

Q Rev. Holmes, in the last city election in the City of Dallas is it true that at least in the contested races and for the city council in the City of Dallas that George Allen led the ticket?

A Yes.

Q By leading the ticket, got the most votes?

A As far as I can recollect I believe so.

Q So would you think it fair to say that a qualified person in Dallas County can be elected to office if he's a good candidate, qualified, and puts on a good campaign, regardless of what his color is?

A I think that would have to be other factors at work, other than an individual black candidate.

Q Oh, yes, he would have to work hard and work up a campaign organization, do the usual things that you --

A I think he would have to have certain identifiable support. For example, in this instance I think being on the slate of the Citizens Charter Association was a key factor because he had run a couple of times as an independent and was not elected, so I think that being on the slate was what made the difference this

time around.

Q Having a lot of support of course helps to get elected?

A (Witness nods head)

Q And having groups back a candidate?

A Yes.

Q Is necessary?

A Right.

MR. LUNA: I believe that's all. Thank you.

MR. MAUZY: We'll reserve our questions until the time of trial.

MR. LANE: That's what we are doing too on these.

CROSS EXAMINATION

BY MR. WHITE:

Q You have responded here to Mr. Luna's questions to the best of your knowledge and honestly to the best of your belief, haven't you?

A Yes.

Q Would you have responded in a similar fashion if I or anyone else in this room had been asking you the same questions?

A Yes.

MR. WHITE: That's all I have.

(Signature waived by agreement of all parties present

LINDA KIDD
Certified Court Reporter
in Dallas
DALLAS, TEXAS

STATE OF TEXAS I

COUNTY OF DALLAS I

I, Linda Eidd, a Notary Public duly commissioned and qualified in and for the County of Dallas, State of Texas, do hereby certify that, pursuant to the agreement hereinbefore set forth, there came before me on the 31st day of December, 1971, at 4:30 o'clock p.m., at the offices of MULLINAX, WELLS, MAUZY & BAAB, INC., 1601 National Bankers Life Building, Dallas, Texas, the following named person, to-wit, MR. ZAN WESLEY HOLMES, JR., who was by me duly sworn to testify the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, and that the signature of the witness to his deposition was waived by all parties present, pursuant to the stipulation heretofore set forth.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties of the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties

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hereto, or financailly interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 2nd day of January, A. D., 1972.

Linda Eidd

LINDA EIDD, NOTARY PUBLIC IN AND FOR DALLAS COUNTY, TEXAS

My Commission Expires June 1, 1973

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FOR THE WESTERN DISTRICT OF TEXAS

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ATTORNEYS FOR DEFENDANTS
STATE OF TEXAS ET AL

ANSWERS AND DEPOSITION of DR. EMMETT J. CONRAD, produced as a witness at the instance of the Defendant, Roy Orr, taken in the above styled and numbered causes on the 31st day of December, A. D., 1971, at 12:00 o'clock p.m., before Linda Eidd, a Notary Public in and for Dallas County, Texas, at the offices of MULLI-NAX, WELLS, MAUEY & BAAB, INC., 1601 National Bankers Life Building, in the City of Dallas, County of Dallas and State of Texas, in accordance with the agreement hereinafter set forth.

A G R E E M E N T

It is hereby agreed by and between the parties hereto that this deposition is being taken under the same agreement that was adopted and made a part of the depositions of the Members of the Redistricting Board that were deposed this week.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that the Notary Public taking this deposition may return and file the same without the signature of the witness thereto, said signature of the witness being waived by all parties, and said deposition to be used on the trial of these causes with the same force and effect as though the same had been read and signed by the said witness.

DR. EMMETT J. CONRAD,

a witness named in the annexed agreement, being of lawful age and being first duly cautioned and sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. LUNA:

Q What is your name, please, sir?

A Emmett J. Conrad.

Q Dr. Conrad, would you tell us what your educational background is, please, sir?

A I have an undergraduate degree from Southern University, medical degree from Meharry Medical College in Nashville with postgraduate training at St. Louis City Hospital system.

Q And you said an M.D. degree, did you not?

A Yes. My postgraduate training was in Sedrick (phonetic).

Q Are you a member of -- Well, first, are you licensed to practice medicine in Dallas County, Texas?

A Yes, I am.

Q Is your license on file with the District Clerk in Dallas County?

A Yes.

Q Are you an active practitioner of your profession in this county?

A Yes.

Q Where is your office, please, sir?

A South Oakland, 4432 South Oakland, Dallas.

Q Dr. Conrad, are you on the staff of one or more hospitals in Dallas?

A Yes, St. Paul Hospital.

Q St. Paul Hospital?

A Yes.

Q Dr. Conrad, you are an intervenor in the lawsuit in which we are taking your deposition, are you not?

A Yes.

Q I believe you intervened in the Tyler case, the case that was filed in Tyler, the Regester case?

A I'm not sure but I imagine it was. We requested -- a lawyer would know that.

Q I want to ask you some questions here, Dr. Conrad, that might be obvious to us as we sit around this table but in order to make the record that the Court will read in this deposition. First of all what is your age?

A I'm, let's see, forty-eight.

Q Forty-eight?

A Uh-huh.

Q What is your color?

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A Black.

Q As I say that might be obvious to us at this table but when the record is read here we need to make a record of it. How long have you practiced your profession in Dallas County, Texas?

A Sixteen years.

Q Sixteen years. Do you hold an elective office?

A Yes, I do.

Q What elective office do you hold?

A A member of the Board of Trustees, Dallas Independent School District, Place 5.

Q How did you happen to become a member of the School Board initially? By that I mean were you appointed by the Board or did you run for election?

A No, I ran for election.

Q Under the Dallas Independent School District system of electing trustees, do they elect their trustees at-large in the district or in some particular area?

A At-large in the district. One must -- a party of trustees must live in a certain area though, but it's essentially at-large.

Q Although there is some requirement that part of them live within given boundaries, even those are

elected in the district at-large, is that right?

A Yes.

Q By that we mean all voters have a right to vote on all trustee --

A That's right.

Q Dr. Conrad, would it be fair to say for a quick geographical description of Dallas Independent School District that that district covers most, although not all, but most of the City of Dallas, all of the City of Seagoville, part of the City of Garland and perhaps part of some other municipalities; would that be a reasonably good description?

A That would be reasonable.

Q Is the Dallas Independent School District and the residents therein, in your opinion, sophisticated enough that a black man can be elected district-wide if he is a qualified black man?

A When you say sophisticated enough and a black man I would like to qualify that. It's obvious that we have a black man on the Board and I was elected at-large.

Q All right, sir. Well, and also, I don't know what the qualification is. Certainly nobody has ever contended that you were not well qualified.

A No, that's not the qualification I'm speaking

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of. The qualification that I would speak of would be whether the -- they would elect more than one black. You say a black man. To me a black can be a form of tokenism too.

Q I see. But on the other hand electing them from districts could result in segregating the black community as far as elections are concerned in a manner that would not be to the black community's benefit too, is that not true, sir?

A It would be very difficult to draw district lines that in the end would not allow for the responsible representation from a given area. It could be done but it would be very difficult.

Q Well, with respect to the School Board would it be fair to say that you are an advocate of the system of electing members of the Board of Trustees at-large?

A No.

Q It would not be fair to say that?

A No.

Q Would you tell us what your position is?

A I advocate single-member districts. In fact, at the most recent at-large meeting we had I proposed it and also proposed that we seek a judgment, opinion from the Attorney General regarding the validity of

nine single-member district or six single-member district and three at-large or some other form. This is my posture on it.

Q Do you remember making a statement on a radio station in regard to electing school board members at-large about a week ago last Monday that was played on the radio about --

A No. The press has talked to me quite a bit. I don't remember specifically which one you are talking about.

Q Do you recall whether or not a conversation with you was taped and played on the radio to the general effect that you were opposed to putting the black people in their own district insofar as school board elections were concerned and that you preferred electing members of the School Board at-large and --

A (Witness shakes head)

Q -- in your words, if these are your words, Dallas is sophisticated enough to elect members of the School Board from the district at-large?

A Let me put that in proper context because I did discuss this with the radio station. My statement was this: I oppose gerrymandered districts. I am for single-member districts, with a proposal that was before the Board then would junk what we had passed as

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the statute in setting up the committee to redistrict, we asked that the district, as few moves as possible be made, that it come from contiguous districts in the fill in because my district had a 185,000 and I should have only a 135,000 so I should lose 55,000, 50,000, roughly. The proposal that came from the Chairman of the Subcommittee would have moved something like seventy-five, roughly seventy-five census tracks, would have added to my district rather than take away and to me this is a form of gerrymandering in which I oppose. Now, the statement about being sophisticated I was asked whether the small percentage of blacks in the next district, would that be sufficient to get more than one member of the Board, and this I pointed out that Dallas has been sophisticated enough to elect a black.

Q So then I guess it would be fair to say that you opposed -- well, to say it another way that you prefer the at-large system of electing members of the School Board to the single-member district plan that was then being proposed to be adopted?

A Yes. Let's put it this way: That I was opposed to gerrymandered districts. I don't think districts should be made according to racial lines. I don't think that's a requirement that they be ethnic considerations in view -- if they are compact and

drawn properly.

Q And that would apply to legislative redistricting of the county --

A That's right.

Q -- as well as --

A That's right. Drawn fair.

Q Drawn fair?

A That's right.

Q And don't draw them necessarily where it would place all of some particular ethnic group in a district or none? Just draw them without regard to the ethnic --

A In a fair manner.

Q In a fair manner, all right, sir. Dr. Conrad, I'm asking you this question for the record because of course I know that you do know the man I'm about to ask you about very well, Rev. Zan Holmes.

A Yes.

Q He is a member of the legislature, is he not, sir?

A Yes.

Q Has been for at least two elective terms and one special election, has he not?

A Yes.

Q Do you know how he happened to be in the

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legislature in the first instance or how he was selected to run?

A Yes, sir.

Q Would you tell me how that was, sir?

A There was a meeting of concerned black after Joe Lockridge's untimely death, trying to find somebody who could articulate the needs of the black community for our token position in the legislature. At this time we talked about eight or ten different people. In the final -- we had several meetings; it finally ended up urging Zan Holmes, who was a reluctant candidate, to run. He ran in a field of twenty-two or twenty-one, something like that. It was more than fifteen; I remember that. And he won the unexpired term of Joe Lockridge without a run off mainly because of the black support and the fact that this was an unusual election, it wasn't a generalized, a lot of activity regarding it.

Q You were one of the ones that was consulted in order to find that black candidate?

A I was one of the ring leaders you might say along in trying to get something done because --

Q Dr. Conrad, at that time isn't it true that after members of the black community had indicated a choice of Zan Holmes to run for the legislature that

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the Democratic Executive Committee also formally endorsed him in that special election?

A I don't think that's quite true. They endorsed him, they put him on the slate for the fall election but I think they didn't endorse anybody that I know of in that twenty-one man slate for the unexpired term. I might be in error but I don't recall getting endorsed because one of the problems we had was raising enough money in the black community to run him on a county-wide problem, and I was one of the ones in charge of that and it was hard to do. Now, we did get his name on the November slate because it was encumbered upon the Democratic Committee to select somebody. The election was merely for the unexpired term and the Democratic Central Committee or whatever it is had the power to name somebody for the November slate, because of his untimely death. They could have named Zan or they could have named anybody else. But before he won I don't recall getting endorsed officially by the Democrat.

Q You don't recall. As of this time you would not dispute that, would you?

A I'd like to say this: If they did endorse us they didn't send any funds to help his campaign; I remember that quite well.

Q. The Democrats are pretty well in debt, you know; funds are not what we are long on. Dr. Conrad, as you pointed out in the County Democratic Executive Committee, which incidentally is composed of the County Chairman, the Secretary and every precinct chairman in the county, is it not?

A. I think so.

Q. They did select the Rev. Zan Holmes at some point before the November election them as a Democratic nominee?

A. Yes.

Q. Do you know whether or not I personally as then Secretary of the party offered the resolution to put him on as the nominee?

A. I remember you were helpful because I recall a meeting at one of the hotel inns, dinner meeting, where this was discussed. I don't recall your being in opposition to it at all at that time.

Q. Dr. Conrad, in politics we talk of whether or not a black officeholder does or does not represent the interest of the black community sometimes, do we not?

A. That's right.

Q. Or whether or not he is representative, truly representative of the black community?

A That's correct.

Q If I ask you that question, and I do, about Zan Holmes, would you say that he is a good representative of the black community or not?

A Most definitely he is, an excellent representative.

Q Would it also be fair to say that in your opinion as a political observer in Dallas County that he is also a good and effective hardworking representative for all other groups in Dallas County?

A Yes.

Q So then in view of what you have told me about Zan Holmes I would assume then that you would say that the black community can be well represented by a black, this time limiting it to a black?

A Can be well represented?

Q By a black.

A No.

Q Wait, let me finish my question.

A Oh, I'm sorry.

Q Well represented meaning articulating the views of the black community and presenting their interest in the legislative halls that the black community can be -- Let me withdraw the question and ask it over; maybe it will be clear. Would you say that a

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person in the at-large multi-member district election process for members of the legislature, that a black can be elected who is a true representative of the interest of the black community?

A. The reason I'm going to say no is because there is a diverse interest and I don't think a person can be entirely representative of all of them. Zan Holmes is a good representative.

Q. And don't you think, or do you, that he is as good a representative as could be produced from the black community under any single-member district system?

A. I have no way of knowing that.

Q. Well, really though, Dr. Conrad, you think he's about as good as you could get, don't you?

A. I think he's a great guy; I really do.

Q. Are you also aware, as I of course know you are, that the black population in Dallas County has been growing over the last few years?

A. Yes.

Q. And would it be also fair to say that as you and other black leaders have begun to work harder in politics, that the black community has been more effective and larger numbers have voted?

A. I know not the reason, although it's a little

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flary but people are voting more. I think it has more to do --

Q In the black community?

A I think it has more to do with the financial prohibitions that were lifted with the poll tax system and the need of registration. Yes, sir.

Q So we have registered more voters, at least in the black community as well as other parts of the community?

A Yes, sir.

Q Since we got rid of the poll tax?

A (Witness nods head)

Q While we are on registration, do you know of any effort, organized or otherwise, in Dallas County to keep any segment of the population from registering to vote?

A Not at the current time, no, I don't.

Q As a matter of fact, you, along with many other leaders in all segments of the community, have affirmatively encouraged people to register to vote in recent years, have we not?

A That's correct.

Q Do all the people in Dallas County who do register to vote have access to the political system and an opportunity to vote?

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A As far as I know of.

Q Dr. Conrad, do you know, as again I'm sure you do, that Dallas County in this redistricting program is changed from fifteen members of the legislature authorized to eighteen?

A Yes.

Q And isn't it a fact that many political leaders, both black and white, have advocated that in in the 1972 elections that we have at least three black candidates offer themselves for the Democratic nomination and a Mexican-American?

A No, I didn't know of any specific numbers. I have advocated as many as qualified. Not a number, you know, particular number.

Q Well, you are asking of course for qualified candidates?

A In all areas.

Q In all areas?

A Regardless of the race.

MR. LUNA: Pass the witness.

CROSS EXAMINATION

BY MR. MAURY:

Q Let me ask just a question or two, Dr. Conrad, for purposes of the record I'm Oscar Maury and I represent the plaintiffs in the Register plaintiffs

in this redistricting case in which you have intervened. Dr. Conrad, based on your experience in the sixteen years that you have lived in Dallas County, what factors have led to opening up the political process to members of minority groups, not just the black community but other minority groups in Dallas County?

A I think the biggest thing was the elimination of the poll tax and I think the next thing that is helping out a great deal is the easing of the limitations we had previously on registering people out in the community, where they didn't have to come to the courthouse for instance to register.

Q Do you have an opinion as to whether or not the at-large system of electing members of the Texas House of Representatives in Dallas County discriminates against black people?

A It discriminates not only against blacks but poor as well because it is a financial burden to run in a district with over a million people whereas if it was divided up it would be roughly seventy-five thousand. And a person of limited means could very well run in a contiguous district say of seventy, seventy-five or eighty thousand much easier than they can over a million people.

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Q If the single-member district plan were adopted and if Dallas County is divided into eighteen districts of equal population, do you feel that the interest of the black community would be better represented by the people who would be elected from the districts where the majority of the Negro people live?

A Yes.

Q Why do you feel that way?

A I think they would be more responsive to that contiguous area, they would better know the needs of that area. It is difficult for one man to serve the needs of a quarter of a million people. You don't know all their problems, it's just physically impossible for you to articulate all the problems in the specific areas from that size of group. I think that more people closely tied to the community and to the hopes of the community would offer themselves for office and would have a possibility of winning.

Q So I understand then that you favor the individual member district system both for the Dallas Independent School Board of which you are a member and for the State legislature?

A Yes, and I'm on record at the Board as offering a motion to proceed with it, to proceed at least with the investigation of the legality of it.

LINDA KING
Official Court Reporter
DALLAS, TEXAS

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MR. MAUZY: All right, sir, I have no further questions.

MR. LUNA: Excuse me a minute, if I might just ask a couple of more questions.

REDIRECT EXAMINATION

BY MR. LUNA:

Q What would be the cost that you would think a member of the legislature or a candidate for the legislature would spend in a single-member district if a single-member district in Dallas County was cut up so that it contained somewhere around seventy-four or seventy-six thousand people?

A Of course that would vary with what the candidate wanted to do and his technique in running for office. He could spend a whale of a lot of money on television and billboards but it wouldn't be necessary for seventy or eighty thousand. I think a couple of mailings would cover this area. I would say it would be less than $3,000.00. It depends on the interest that he had and the voluntary workers that he would have too. There's so many factors go into that it would be difficult to come up with a, you know, real specific figure but I think you need at least a couple of mailings.

Q So even in a single-member district in an area

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like Dallas County he ought to be prepared to spend in the area of $3,000.00, plus or minus?

A I think this would be reasonable, if he really wanted to assure himself of election.

Q So when you mentioned discriminating against the poor it's just a fact of life that even in a single-member district that a person still needs to have some funds to run?

A If he expects to win.

Q And people do in politics make these races by their friends and neighbors and other supporters helping contribute, is that an accepted thing?

A That's normal.

Q So you are not saying that only those people who were able to spend $3,000.00 out of their pocket would be expected to be able to win?

A No; no, the three thousand would not come necessarily out of their pocket. In fact, I advocate for the candidate himself to spend nothing on the candidacy; this is my posture on it. If he is offering himself for a public service the public should foot the cost of his procedure in that neighborhood.

Q We have had some testimony here in the record earlier today, Dr. Conrad, that because of the high cost of mailings now that it is necessary to cut down

at least some on mailings and use telephone teams to contact people. Have you had experience with using telephone committees?

A Yes, I find it a very effective -- people, it's one good way of finding out the real friends who will work at it for nothing.

Q So costs have made us turn to some of those physical efforts some?

A I don't think necessarily the costs is the thing that made the people turn to it. It's the effectiveness of it because people at election time, I think if they get reminded by someone that they recognize or know or know of they are a little more apt to respond than if they get a cold letter in the mail. And it can be expensive if a candidate has to go out and hire his telephone callers. In some instances they have done that.

Q Dr. Conrad, I want to ask you because of your position in the community and your general knowledge of the community and the election process, as to whether or not the at-large system in any way discriminates against a person who belongs to the Republican Party? Now, I'm talking about discrimination as distinguished from winning or losing.

A I think it does. I think that for instance

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in Dallas County there would be definite areas that the at-large system keep a man of another party from winning.

Q Are you talking about there though just that single-member districts instead of removing any discrimination simply makes it easier for him to win? Aren't we talking about a political problem rather than a prejudicial problem?

A This might be -- I think that it's prejudice, it's a prejudice against those who support that particular cause to prevent representation from that area who believe in that particular political system or party.

Q Do you know Representative Fred Agnich?

A Know of him. I don't know him personally.

Q He was nominated under the Republican ticket, was he not?

A Yes.

Q He did get elected then in November of 1970, did he not?

A Yes.

Q So then the right kind of Republican, whatever that is, can be elected some years in Dallas County, can he not?

A Yes. And I wonder how much he spent in that

effort. As I recall he was well funded for the effort.

Q Most Republicans are, Doctor. In 1962, were you here then?

A Yes.

Q We have had testimony in this record in other depositions that every Republican who was running for the legislature that year in a contested race -- the only races Republicans were in were contested races -- but every Republican who offered himself for the legislature in 1962 won in the general election; do you remember that to be so?

A I remember one year when the Republicans, I think it was -- I don't know whether it was '62 or -- they swept, they swept the -- I don't recall what year though.

Q So they were not discriminated against in 1962, were they?

A Then my answer to that -- well, I don't remember the year first thing, but when you say discriminated against I don't know who was in that particular thing. There were probably some areas of Dallas who would have been better represented by somebody else to articulate their need.

Q The reason I asked you that question, when we get away from race or color or religion and talk about

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parties it's really a matter of who has the type program that appeals to the people and winning and losing instead of prejudice against a party, wouldn't you say?

A No, I think -- You say when you get away from race?

Q Get away from race, yes, sir.

A Probably is, yes.

Q Dr. Conrad, wouldn't it be fair to say that at least during the period of years that you have been in Dallas County that the vast majority of the black people who voted have been Democrats?

A Yes.

(Whereupon an off-the-record discussion was held, after which the following proceedings were had:)

MR. LUNA: I think I have about run out of questions, Dr. Conrad.

CROSS EXAMINATION

BY MR. BUNDLEY:

Q Dr. Conrad, as you know my name is C. B. Bundley and I represent you. Some questions have been asked you about the election back in 19 hundred and 62 and I believe that Mr. Luna said or asked you the question if it wasn't really the reason that the Republicans won in '62 was because of their political philoso-

phy at that time that was appealing to the masses of people at that time?

A Yes, to the at-large.

Q And I believe your answer to that question was that was probably the reason that they were able to elect Republicans at that time, is that correct?

A Yes.

Q Dr. Conrad, just as the philosophy of the Republicans that were successful in this election was able to prevail at that time, have you also found in the sixteen years that you have lived in Dallas that the philosophy of the blacks in Dallas has not been able to prevail to the extent that any more than one black could ever be elected, and only then if he were approved by the Democratic hierocracy?

A That's correct.

Q In other words, in order for a black to be elected he must be approved by the Democratic hierocracy, has that been your experience?

A That has been the past experience.

Q If we have a single-member district composed of approximately seventy-five thousand voters --

MR. MAUZY: Excuse me, it would be people rather than voters.

Q Seventy-five thousand people and these single-

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member districts are drawn fair and equitably do you believe that a black who is relevant to the feeling of the black people and yet his philosophy is not that that can be accepted by the hierocracy of the Democratic Party that that black could be elected?

A Yes.

Q And that this black that is elected or these blacks that are elected could expound the philosophy and the theory of the blacks that they represent irregardless of whether or not that philosophy is approved by the hierocracy of the Democratic Party?

A Yes.

Q Then, Dr. Conrad, during the sixteen years that you have been in Dallas have you ever known of any more than one black to be elected to the State legislature?

A Two.

Q Have you ever known of any more than one at any one election?

A No.

Q To be elected?

A No.

Q During the sixteen years that you have been in Dallas only two blacks have been elected, is that correct?

A Yes.

Q One was Joseph Lockridge --

A Yes.

Q -- who was first elected? I believe you sat with us in selecting Joe too, did you?

A No, I was a new man in the community.

Q Then you are not really familiar with how Joe got elected?

A (Witness shakes head)

Q Well, let's move on up to Zan Holmes then. He was elected after the death of Joe?

A Yes.

Q In the meanwhile there were some other blacks that had attempted, that had run rather before Joe, isn't that correct?

A Yes.

Q They were not accepted by the hierocracy of the Democratic Party, were they?

A That I don't know. The fact of the matter, I don't recall who ran before Joe.

Q Do you remember when Bedford ran?

A I'm not knowledgeable about that. Huh?

Q Do you remember when Bedford ran?

A Oh, yes, I remember that one.

Q You remember him now, don't you?

A Yes, yes, I remember him.

Q You also remember that Sanford was not approved by the hierocracy of the Democratic Party too, don't you?

A Yes, that's correct.

Q So he was thoroughly defeated, was he not?

A Yes.

Q Dr. Conrad, if we have the single-member district and the boundary lines are fair and equitably drawn, based upon your political experience do you feel that more than one black can be elected to the State legislature?

A Yes.

Q Do you also feel, Doctor, that more than one black in the State legislature could more adequately represent the theory and philosophy of the black people?

A Definitely.

Q Than a single-member?

A Definitely.

Q I believe that a question was asked you also, Doctor, if whether or not Zan Holmes was a good legislator?

A Yes.

Q One that was accepted by the black people and

attempted to expound the philosophy of the black people?

A Yes.

Q I believe you were asked that question and your answer was yes. I believe you also were asked the question as to whether or not since he was elected at-large that the black's philosophy was being expounded and promulgated in the State legislature, something to that effect, I believe you were asked that question, were you not?

A Yes.

Q And your answer was as far as he could do it was being done, is that correct?

A That's the basic.

Q With the size of the State legislature and the size and number of legislators that we have from Dallas County, do you believe that one person expounding the philosophy of the black people can be as effective in getting legislation passed that would improve the conditions of blacks as two, three or four that could be elected from a single-member district?

A No.

Q Then, Doctor, are you of the opinion that not having single-member districts in Dallas County, any facts discriminates against the blacks in that it

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does not provide them with the sufficient number of legislators who can promulgate the philosophy, the desires and the hopes of the black people of Dallas County?

A Yes.

Q Do you also believe that the only way that the blacks of Dallas County can be adequately represented and ultimately arrive at the goal of equal opportunities is through a single-member district whereby they will be able to elect a sufficient number of either black people or people who are interested in the philosophy that they are interested in; do you believe that that is the only way that the blacks will ever be able to obtain the rights of full citizenship in Dallas County?

A Yes.

MR. BUKLEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. LUNA:

Q Dr. Conrad, that brings to mind two or three more questions, a few more that I would like to ask you. What year were you first elected to the School Board?

A '67 I think it was, '67.

Q Now, in running for the School Board although you didn't run on a Democratic or Republican ticket as such you did run on a ticket, did you not, sir?

A Well, we ran as a group, yes.

Q As a group?

A Uh-huh.

Q What was that group called or the chief supporters of that group?

A LEAD, LEAD.

Q LEAD?

A League for Educational Advancement of Dallas.

Q That was a group that was put together or associated themselves to elect school board members in particular, was it not? How many school board members on the Dallas School System?

A Nine.

Q How many places were up for election that year?

A Three.

Q How many places did the LEAD group elect that year?

A Two.

Q Then in 1968 was there another election or was it --

A Yes, there was an election every year.

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Q Did LEAD elect some candidates that year?

A It elected three, three out of three.

Q Three out of three in '68?

A Uh-huh.

Q Was there an opposing group?

A Yes.

Q What was the name of it?

A C.G.S., Committee for Good Schools.

Q So in 1968 the Committee for Good Schools lost three races out of three?

A That's right.

Q And is that a group that had prior to 1968 elected most of the school board members?

A For about twenty years I understand.

Q So then at least to the extent that in 1968 they didn't elect anybody, those who supported LEAD were discriminated against to the extent that they didn't win, right? At least they lost?

MR. MAUZY: Excuse me, I think you've got your question backwards, Earl. LEAD won in '68.

Q Excuse me. C.G.S., those who supported C.G.S.

A The system discriminated.

Q Yes, sir. Let me reframe my question: In

1968 C.C.S. lost three races, right?

A That's right.

Q Now, since they didn't get anybody elected in 1968 would you say that the supporters of the C.C.S. were therefore discriminated against?

A I'm saying that the system discriminated against individual segments. I feel in 1968 C.C.S. probably could have elected one, if they were in single-member districts.

Q So at least they lost the election though?

A Yes.

Q So since they didn't have anybody elected, if we mean by losing the election discrimination, they were discriminated against?

A If you mean by just losing the election, yes.

Q But if we don't mean that you and your group didn't discriminate against them, did you, Doctor?

A You mean -- No, it was a system already established of how we elect them. Not by groups.

Q So then in some of those instances we are talking about winning and losing elections as distinguished from discrimination, aren't we?

A Yes.

Q For instance, right now the President of the United States is a Republican, isn't he?

POOR COPY

A Yes.

Q So simply because he is a Republican we wouldn't say that those of us who happen to be Democrats are discriminated against? On the other hand we simply lost an election, didn't we?

A That's correct.

MR. LUNA: That's all.

REDIRECT EXAMINATION

BY MR. BUCKLEY:

Q Let me clear up just one point there, Doctor, please. From the questions that Mr. Luna has just asked you, the questions are predicated on the fact that winning and losing an election is the basis on which you have contended that a losing party or candidate has been discriminated because he lost?

A No.

Q Is that what you were saying or is it because of this system and the method of the election that is the discrimination?

A It's my contention it's the method of election in discriminating against specific segments of our society.

Q Going back to your 1968 election that he just referred to, if the members of the School Board had been elected by districts do you believe that the op-

LINDA EDDO
Certified Court Reporter
DALLAS, TEXAS

position that lost its whole slate could have elected at least one member?

A I think it was highly likely that they would have elected one member.

Q So it is not that their being defeated that was discrimination but the method by which they had to be elected brought about the discrimination, is that what you had reference to?

A Yes.

MR. BUNKLEY: That's all.

REDIRECT EXAMINATION

BY MR. LUNA:

Q By discrimination we mean if it was broken up into districts it would give some groups more of a political advantage than they have at this time, don't we?

A Yes.

MR. LUNA: That's all.

MR. BUNKLEY: One other question.

RECROSS EXAMINATION

BY MR. BUNKLEY:

Q Is it the group that has the political advantage that you have reference to or would it give the individual voter an opportunity to have his voice adequately heard by the person that is running within his

POOR COPY

district? In other words, if the individual voter wanted to expound his philosophy, can he do it better by having to elect a person representing a single-member district or can he have the same effect or will his voice have the same effect on an individual who is running at-large where he has to be elected from the entire county?

A I think a person who represents a single district would be more sensitive to the needs of that community, would be more articulate in expounding the causes of that area without doubt.

MR. BUECHLEY: That's all.

REDIRECT EXAMINATION

BY MR. LUNA:

Q Let me come back to the Republican Party once more, Doctor. We have not identified in this record what party, political party that you belong to and I don't propose to ask you at this time. But are you aware that there are approximately ten members of the legislature, that is the House of Representatives, who are Republicans?

A I know there are some Republican members, particularly from West Texas and one from here and one from Houston too I guess.

Q Would you also agree that more or at least

half of the seats in the legislature of the hundred and fifty places are elected from single-member districts?

A Yes.

Q And so far as the Republicans are concerned would you agree, as our record shows in other depositions, that only two of those Republicans are elected from single-member districts and the other eight are elected from multi-member districts?

A I didn't know that.

Q I see.

A But it was -- Well, I just didn't know that.

Q Well, at least you do know that one of the Republicans --

A Agnich.

Q -- was elected from Dallas County in a multi-member district?

A That's right.

Q And I assume that you know that there is --

MR. MAUZY: There are several Republican members in the House in Harris County that run on an at-large basis too.

Q Yes. You are aware of that too, aren't you?

A Yes.

POOR COPY

MR. LINK: That's all, thank you, sir.

MR. SUMKLEY: I have no further questions.

MR. MAUZY: I have no further questions at this time.

CROSS EXAMINATION

BY MR. WHITE:

Q I'd like to ask you a question, please. I'm John White and my firm represents Johnny Marriott et al, and others, who are plaintiffs in this suit. If I had been the one asking these questions here this morning would you have answered them substantially the same way?

A Oh, yes.

MR. WHITE: That's all I have.

(Signature waived by agreement of all parties present)

STATE OF TEXAS I
COUNTY OF DALLAS I

I, Linda Eidd, a Notary Public duly commissioned and qualified in and for the County of Dallas, State of Texas, do hereby certify that, pursuant to the agreement hereinbefore set forth, there came before me on the 31st day of December, 1971, at 12:00 o'clock p.m., at the offices of MULLINAX, WELLS, MAUZY & BAAB, INC., 1601 National Bankers Life Building, Dallas, Texas, the following named person, to-wit, DR. EMMETT J. CONRAD, who was by me duly sworn to testify the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, and that the signature of the witness to his deposition was waived by all parties present, pursuant to the stipulation heretofore set forth.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties of the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties

LINDA EIDD
CERTIFIED COURT REPORTER
RI 0-2341
DALLAS, TEXAS

POOR COPY

hereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 12 day of January, A. D., 1972.

Linda Kidd

LINDA KIDD, NOTARY PUBLIC IN AND FOR DALLAS COUNTY, TEXAS

My Commission Expires June 1, 1973

LINDA KIDD
County Court Reporter
Room 6000
DALLAS, TEXAS

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CURTIS GRAVES, ET AL

VERSUS — Civil Action No. A-71-CA-142

BEN BARNES, ET AL

DIANA REGESTER, ET AL

VERSUS — Civil Action No. A-71-CA-143

BOB BULLOCK, ET AL

JOHNNY MARRIOTT, ET AL

VERSUS — Civil Action No. A-71-CA-144

PRESTON SMITH, ET AL

VAN HENRY ARCHER, JR.

VERSUS — Civil Action No. A-71-CA-145

PRESTON SMITH, ET AL

ORAL DEPOSITION OF

MR. UTAH KIRK

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Attorney at Law
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ROY ORR

MR. WARDLOW LANE
Attorney General's Office
Austin, Texas

APPEARING FOR THE STATE OF TEXAS

ORAL DEPOSITION OF
MR. UTAH KIRK

ANSWERS AND DEPOSITION of MR. UTAH KIRK, a witness produced on behalf of the Defendant, Roy Orr, taken in the above styled and numbered cause on the 31st day of December, A. D., 1971,

before Nancy C. Blinker, a Notary Public and Certified Shorthand Reporter in and for Dallas County, Texas, in the offices of MR. JOHN COLLINS, located at 1600 National Bankers Life Building in the City of Dallas, County of Dallas and State of Texas in accordance with the agreement hereinafter set forth.

AGREEMENT

It is hereby agreed by and between the parties hereto that this deposition is being taken under the same agreement that was adopted and made a part of the depositions of the Members of the Redistricting Board that were deposed this week.

* * *

NANCY OLINGER
OFFICIAL COURT REPORTER
DALLAS, TEXAS

MR. UTAH KIRK,

having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. LUNA:

Q What is your name, please, sir?

A Utah Kirk.

Q Mr. Kirk, where do you live?

A 2402 Naoma.

Q Is that in Dallas --

A Yes.

Q -- Dallas County, Texas?

A Yes.

Q How long have you lived in Dallas County, Texas?

A All my life except for the time I spent in school and the Army.

Q How old are you?

A Forty-eight.

Q So you have lived in Dallas, Dallas County, Texas, forty-eight years?

A Yes.

Q Except for the time you spent in school and in the Army?

A Right.

Q Where outside of Dallas, first of all, did you go to school?

A I went to school in Lawton, Oklahoma.

Q Lawton, Oklahoma?

A Yes. And while I was in the service, I went to the University of Hamburg in Germany.

Q You say you were in the service. You are talking about the Armed Services of the United States?

A Yes.

Q When were you in the Armed Services, for what period of time?

A 1941 to 1944.

Q You may need to talk just a little louder so she can hear you.

A From 1941 to 1944.

Q Did you serve overseas?

A Yes.

Q Where?

A As a matter of fact, nine foreign countries in Europe.

Q Nine foreign countries in Europe. Did you receive service decorations of any type during the service?

NANCY SCHNEIDER
CERTIFIED COURT REPORTER
DALLAS, TEXAS

A Oh, yes, I have approximately nine ribbons and four major battle stars.

Q Four major battle stars?

A Yes.

Q Were you honorably discharged?

A Yes.

Q What type of work do you do at this time, and have you generally done for the last several years?

A For the past six years I have been retired.

Q From what were you retired?

A Civil Service.

Q What part of the Civil Service were you in?

A Post Office Department.

Q And you have been retired then for approximately --

A 1964.

Q Since 1964?

A Yes.

Q When you were active in the Post Office, did you work in the Dallas Post Office?

A Yes.

Q In what capacity?

A First I started out as a mail handler. Then I worked as a special delivery sorter. Then I worked as a clerk. I worked as a truck driver. And that's it.

Q Mr. Kirk, since we are taking your deposition in writing, which will be offered to the court perhaps without your being present, I want to ask you a few questions that would not otherwise be obvious from reading the record.

A Yes.

Q Some of these questions that I am going to ask you now, we obviously can see, but it may not be that way in court, if you are not present when your deposition is offered. So, first of all, would you tell me what color you are?

A Black.

Q All right, have you lived in an area, or do you now live in an area in Dallas, Dallas County, Texas, that is predominately inhabited by members of the black or Negro race?

A Yes.

Q And what area with reference to directions of town is that?

A The Oak Cliff section of town.

Q Oak Cliff section?

A Yes, I would say from this place, it would be southeast.

Q Southeast?

A Yes.

Q In working for the Post Office, and having been retired for the last few years, have you had an opportunity to be interested in observing politics in Dallas County, Texas, and especially as they affect the minorities, and especially the black minority?

A Yes.

Q Do you know of any incidents, Mr. Kirk, where in the last several years, including the current time, when the black people or any other minorities, or majorities for that matter, have been hampered in their attempt to register to vote?

A No.

Q On the other hand, has there been an overt effort to attempt to get all people, including minorities, to register to vote in Dallas County?

A There has been a maximum effort.

Q A maximum effort?

A Yes.

Q Have you been a part of that effort?

A Yes, I have been a part of that effort.

Q to help register folks and encourage them to register?

A Definitely so.

Q In your opinion, do the minorities, including the black people, and also the majorities, in Dallas County, Texas, have access to the political system, to vote and participate?

A Yes, they do have.

Q As a matter of fact, again, isn't there an effort made by all segments of the community to encourage all people, regardless of race, creed, color, religion, or national origin, to participate more actively in the political system?

A Yes.

Q Have you been a part of that effort?

A I have been a part of that effort also.

Q We are taking your deposition here today, Mr. Kirk, in connection with some lawsuits that are going to be heard beginning next week in Austin, Texas, in a three-judge federal court attacking the redistricting of the State of Texas insofar as both the senatorial districts and legislative districts are concerned in Texas. You are aware of that, aren't you?

A Yes.

NANCY SELINGER
OFFICIAL COURT REPORTER
IN AND FOR
DALLAS, TEXAS

Q Now, my questions are going to be mainly at this time in connection with the legislative redistricting plan for the House of Representatives of the State of Texas. You are aware, of course, that Texas has been redistricted in the last several redistricting plans that you and I can remember so that it had single member districts in some parts of Texas, but multi-member districts for the House of Representatives in Dallas County, that's right, isn't it?

A Yes.

Q Now, there are some allegations in this case by some Republicans and some minorities alleging that multi-member districts discriminate against, in the one instance against the Republicans, and the other allegation against the minorities; some of the minorities being black and some of them being brown. I want to ask you as a member of the black race whether or not you are also generally familiar with the political realities in Dallas County as to the Mexican-American?

A Yes.

Q Now, have you at times made a study of, and considered the possibilities or probabilities

POOR COPY

of running for the Texas Legislature yourself?

A Yes, I have.

Q Have you made a decision as to, if you had the choice, as to whether you would run from a single member district of just black people or a multi-member district covering the whole county, as to which way you would rather run?

A Frankly, I would rather run from a multi-member district in Dallas County.

Q Would you tell us why you would rather run from a multi-member district?

A Well, first of all to me, the single member districts is nothing more than a form of discrimination.

Q Why do you say that?

A It is putting you in to a corner where you only represent the black people. Whereas multi-member districts gives you a chance to represent the people of Dallas and Dallas County, all of the people of Dallas and Dallas County and not just one special group.

Q Is that another way of saying that people of all races need to learn to work together in government?

A Definitely so.

Q In representative government in Dallas County multi-member districts, do you think a black person simply because he is black would be discriminated against or hurt by the multi-member districts?

A By no means. I would like to answer that question another way also.

Q All right.

A The black people of Dallas have never been denied the privilege of voting in any election. It is usually the apathy of the black community that more blacks aren't elected. They have the same chance as any other race in the city to vote and elect members of their group, if they vote.

Q If they go out and vote?

A If they go out and vote.

Q Now, I believe you are generally familiar with the election returns for the last -- last election, aren't you?

A Definitely so.

Q As I recall, we had a black man named Berlaind Brashear who ran for the Legislature and was defeated in a run-off election, do you recall that?

A Yes.

POOR COPY

Q He was defeated by a white?

A Yes.

Q Although Mr. Brashear was defeated, if I recall, he received fewer votes, not percentage wise, but fewer votes in total numbers in the black community than he received in the white community, is that approximately correct?

A Yes.

Q Is that the way you remember it?

A Yes.

Q Do you know Rev. Zan Holmes?

A Yes, I know him.

Q Do you think Rev. Zan Holmes -- well, first of all, is he a black man?

A Yes, definitely so, black.

Q Is he also a member of the Legislature?

A Yes.

Q Was he elected county-wide?

A Yes.

Q Now, there have been allegations made that a county-wide election of members of the House of Representatives would not result in the election of a black man who was reasonably representative of the black community. Now, with that in mind my question is this: Would it be

MARILYN BLANKER
DEPUTY COURT REPORTER
DALLAS, TEXAS

reasonable to say that Rev. Zan Holmes who was elected under that system of county-wide elections is not representative of the black community?

A He is representing -- he is representing the whole Dallas County, yes.

Q But is he also a popular choice of the black community?

A Definitely so, yes.

Q So would it be correct to say that Zan Holmes is not able to relate to the black community, or would that be incorrect? Does he relate well to the black community?

A Zan does relate well to the black community.

Q Now, does he also relate well to the white community?

A He also relates well to the white community.

Q Now, I don't know whether you know his educational background or not. Do you know his educational background?

A Most of it.

Q Well, he is well-educated and articulate, isn't he?

A Yes, definitely so.

POOR COPY

Q Do you know of any segment of the community, black, white, or brown, who has raised a great -- any great amount of complaint -- I guess there is some objection to anybody in a political office, but have you known of anything that we could call a ground swell of opposition by people of any color against Zan Holmes?

A No. Zan is one of the finest young men I have met.

Q Do you know Dr. Emmett Conrad?

A Yes.

Q What color is he?

A Black.

Q Does Dr. Conrad hold an office in Dallas?

A Yes.

Q What office does he hold?

A He has an office on Oakland. He has a doctor's office, I believe.

Q But is he a member of the Board of Trustees of the Dallas Independent School District?

A Yes.

Q Was he elected in the Dallas Independent School District at large, did they vote all over the district for him?

NANCY BLINCKER
OFFICIAL COURT REPORTER
DALLAS, TEXAS

A Yes.

Q I believe in the Dallas Independent School District, maybe they have to live in a particular area, but they are voted on all over the district, right?

A Yes.

Q Now, the Dallas Independent School District covers most, but not all, of the City of Dallas together with parts of several suburban towns, does it not?

A Yes.

Q Wilmer Hutchins, for instance, is not in the Dallas School District, it is south of it, isn't it?

A Right.

Q But Seagoville, the City of Seagoville and the schools in it are in the Dallas School District, are they not?

A Yes.

Q And part of the City of Garland is in the Dallas Independent School District?

A Yes.

Q And perhaps some more areas, is that right?

A Yes.

POOR COPY

Q Have you known of statements made lately on the radio and in other parts of the news media by Dr. Conrad where he has stated that he doesn't feel in the case of the School Board that the black community ought to be put in one district and set aside to itself, but that Dallas was sophisticated enough to elect a black district-wide, do you know that?

A Yes.

Q A few years ago, Dallas had one Senator, did it not?

A Right.

Q Now, it has been said -- it was said at that time and is being said now about the House that when we divided the county up into some sort of single member districts, or less than county-wide, that perhaps more blacks would be elected. You have heard that said?

A Yes, I have.

Q Now, when Dallas County was divided up into three, and part of another, senatorial districts, was there a black elected?

A No.

Q The three Senators that represent the county are all three white?

A Yes.

Q And the one who represents the excess surplage with some other counties, Senator Hall, is white also?

A Definitely so.

Q Do you generally agree with what Dr. Conrad has said that you told us about a little bit ago insofar as not isolating the black community in one district is concerned?

A Oh, yes, definitely so.

MR. LUNA: I pass the witness.

CROSS-EXAMINATION

BY MR. GREENBERG:

Q Mr. Kirk, my name is Robert Greenberg and I represent the plaintiff, Johnny Marriott and others in connection with this case, you understand that?

A Yes.

Q Now, Mr. Kirk, how many -- Let me ask you this, do you know what precinct you live in?

A Yes.

Q What precinct do you live in?

A 440.

Q About how many blacks from your experience usually vote in that precinct, in

percentage, in other words is it a predominantly black precinct?

A Yes.

Q Or is it predominantly white or what?

A It is predominantly black.

Q Would you say that the total vote from that precinct is fifty percent black, sixty percent, or what would be your estimate?

A Oh, definitely not. It is very seldom, if ever, fifty percent turnout in that precinct.

Q Now, my question is, Mr. Kirk, with regard to those who vote --

A Yes.

Q -- how many, what percentage of those who vote are black in that precinct?

A I would say at least seventy-five percent were black.

Q Would you call Precinct Number 440 basically a conservative precinct or a liberal precinct?

A I would say it is mixed.

Q Now, how many years have you been voting in that precinct?

A Since 1959.

Q Since 1959, how many black candidates

NANCY HINKEN
OFFICIAL COURT REPORTER
DALLAS, TEXAS

the figures, but by a very nice margin, due to the fact of Rev. Holmes' popularity and his position with the United Methodist Church.

Q And also due to the fact that he was black?

A Right, and due to the fact that he was black.

Q Would you say that Precinct 440 is -- in the general election basically votes Democrat or basically votes Republican?

A It basically votes Democrat.

Q Now, if Precinct 440 was put in a single member legislative district with other precincts that voted seventy-five percent black, that is the voters are seventy-five percent black, would you say that a Republican candidate by virtue of that district would be discriminated against?

A By all means definitely so. He wouldn't have a ghost of a chance.

Q Now, let me ask you this. You are familiar with Dallas County as a whole, are you not?

A Yes.

Q Now, you are familiar with the Highland

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Park section of Dallas County?

A Yes.

Q Are you familiar with the voting records of some of the precincts out in Highland Park?

A I have those figures at home. Yes, I am familiar with them.

Q Would you say that the majority of the voting precincts, or at least some of them, in Highland Park votes Republican in the general election?

A Yes.

Q Now, if that area of town was separated into a single member district, and that single member district was made up of precincts that basically vote Republican, would it be your opinion or not that a black Democratic candidate would be discriminated against in that district?

A Yes, he would be.

MR. GREENBERG: I believe that's all.

MR. LANE: The Attorney General's Office has no questions at this time.

CROSS-EXAMINATION

BY MR. COLLINS:

Q Mr. Kirk, just a few questions, please, sir. Did you receive a subpoena to come here this morning?

A No.

Q You are here of your own free will --

A Yes.

Q -- and accord, isn't that correct?

A Yes.

Q And I assume Mr. Luna is the one that asked you to come and give your testimony this morning, is that correct?

A Yes.

Q And I'm sure you had an opportunity to talk with Mr. Luna briefly about what this was going to entail and, you know, what this case is about, is that a fair statement?

A I have known about this inquiry from the start. Politics happens to be one of my fields.

Q My question, Mr. Kirk, was you did have an opportunity to discuss the matter with Mr. Luna, is that correct?

A Yes.

Q And I assume that you discussed some

of the questions that would likely be asked of you here?

A No.

Q Oh, you didn't talk about that?

A Not the questions that would be asked me here.

Q You didn't talk about that?

A No, definitely not. Let me say this while you are on that, I was asked to come down and a deposition would be taken just like that. I was asked if I would come down and give a deposition and I said yes I will.

Q Who called you to ask you to do that?

A Let me get that name together now. Mr. Block.

Q Mr. Bach?

A Yes.

Q When did Mr. Bach give you a call, do you remember, Mr. Kirk?

A It was yesterday.

Q Yesterday?

A Yes.

Q About what time was it, do you recall roughly?

A No, I don't. It was in the morning, I

believe, it was in the morning.

Q What did Mr. Bach tell you when he called?

A Just asked me if I would come down to 1601 National Life Building and give a deposition concerning the redistricting in the State of Texas.

Q Okay, you know Mr. Bach fairly well, don't you, Mr. Kirk?

A I do know of Mr. Bach. I don't know him very well.

Q Well, you know Mr. Luna, our Democratic County Chairman?

A Yes.

Q You know, and I assume you have worked with Mr. Luna as a number of people have over a period of time, would that be a fair statement?

A That would be a fair statement.

Q Now, are you presently a precinct chairman?

A No.

Q You have been in the past?

A No.

Q Oh, you have never been a precinct chairman? Since you have told us that you were familiar with the political situation here in Dallas

County, I would assume you would know about the Democratic Committee For Responsible Government, do you know about that committee?

A Yes, I do know about that committee.

Q Tell us just a little bit about what you know about the, and if we can use the initials, the DCRG?

A Nothing more than it is just an organization, a political organization.

Q Well do you know some of the people who participate in that committee?

MR. GREENBERG: I don't understand your question.

THE WITNESS: I don't either.

MR. GREENBERG: Participate as to what?

Q Participate in that organization, let me rephrase the question, the organization being the Democratic Committee For Responsible Government?

A That question is puzzling to me.

Q Do you know any people who are associated with, who have worked for, or who are now working for, the Democratic Committee For Responsible Government?

A I know quite a few people, now, whether

they are working for this committee, I don't know. I know of the committee, definitely so.

Q My question, though, Mr. Kirk is, do you know anybody who has an office in that organization, or who holds himself out to be part of the Democratic Committee For Responsible Government?

A Yes.

Q And can you tell us who some of those people are that you know?

A Let's see.

THE WITNESS: If I am correct, let me ask a question, Earl, are you a part of that organization? I am sorry about that.

MR. COLLINS: Mr. Luna is shaking his head over there, and I assume he is shaking it negatively.

MR. LUNA: It happens that I am not a member of it.

A (Continuing) I believe that -- I don't know whether this statement is true or not, but I believe that Joe Rich is a part of that organization, and if I am wrong, somebody correct me here because I know of the organization, but the exact

members of this organization because it is mostly -- it is predominantly a white organization and I am not familiar with them.

Q Not very many blacks in that organization?

A What was that?

Q There are not very many blacks in that organization, are there?

A Percentage wise, I think there are.

Q Oh, there are? Can you name some of the blacks?

A I understand that there are blacks associated with it.

Q Well, do you know any of them?

A I have no proof of this.

Q Do you know any blacks who hold themselves out as participating in the DCRG?

A An accurate statement would be that I can't answer that question.

Q Well, let me put it this way, Mr. Kirk, can you name us some blacks that you know of who participate in the organization known as the Democratic Committee For Responsible Government?

A No.

Q But at any rate, do you know that

organization to be very influential in Democratic politics here in Dallas County, would that be a fair statement?

A Yes.

Q They do help or they assist candidates in making races, would that be a fair statement based on your knowledge?

A No, I can't truthfully say that they do assist candidates making races. I know of the organization and I know their purpose.

Q What is their purpose?

A The purpose of it is like the DCRG, what it says, Democratic Committee For Responsible Government. They represent and try to get responsible people for offices, Democratic offices.

Q Now, how did you come to know about that particular purpose of that organization?

A Well, I read an awful lot. I am a political strategist and my job is running political campaigns.

Q What political campaigns have you run in the past?

A Well, I have run and managed Zan Holmes' campaign. Earl Cabell's campaign. I have worked in School Board elections for the past

five years. As a matter of fact I have worked in just about all of the city and county elections for the past eight years, on some parts of them.

Q For the record, you probably already told us this, Mr. Kirk, but how long have you been in Dallas County?

A I have been here all my life.

Q Okay, were you here around say 1947 or '48, somewhere around in there?

A No.

Q Where were you at that time, if you recall?

A From '48, yes, I was here in '48. I was getting ready to go back in the Army, though, the Korean War.

Q Now, prior to 1966, Mr. Kirk, can you tell us the names of any blacks that you had an opportunity to vote for for the Texas Legislature here in Dallas, Texas?

A Prior to 1966?

Q Uh-huh.

A Let me ask you a question. The only black that I know of was Joe Lockridge. Let me get this straight now. Joe Lockridge ran as a black man for the House of Representatives. To

my knowledge he was the first black man to run from the City of Dallas for the House of Representatives.

Q Then did you happen to know Mr. Lockridge by any chance?

A Yes.

Q And being in the -- since you are in the political area here, Mr. Kirk, and since you mentioned Mr. Lockridge, I assume you also knew that he was endorsed by the Democratic Committee For Responsible Government, do you recall that?

A No.

Q You don't recall that?

A I don't know who he was endorsed by.

Q It wouldn't surprise you to learn of that fact, would it, Mr. Kirk?

A In politics, you are not surprised by anything. I know one thing that Joe got an awful lot of support from the white areas as well as from the black, naturally from the black, because he was the first black candidate to run.

Q Well, since you ran Zan Holmes' campaign, then you would also know that he too was endorsed by the Democratic Committee For Responsible Government?

A Oh, definitely so. Let me ask you this question. Candidates seek all endorsements they can get from all organizations, political, social, and other ethnic groups.

Q Well, let me ask you this question: Can you name all of the blacks that you can think of who have run for the Texas House of Representatives who have not been endorsed by the Democratic Committee For Responsible Government?

A Let me say this that in the past whether or not Brashear or Zan Holmes or any of the rest of them was -- I know Zan was endorsed by the organization, but I don't know -- I am only interested in the candidates that I support.

Q My question --

A Whether they are black or white.

Q My question to you, Mr. Kirk, was this, can you name all of the black candidates, other than Mr. Lockridge and Mr. Holmes' who have run for the Texas House here in Dallas County who have not been endorsed by the Democratic Committee For Responsible Government?

A No, I can't name them.

Q As a matter of fact, isn't it true that Mr. Brashear is the only one in recent history

who has run in Dallas County as a black in the Texas House race who has not been endorsed by the DCRG?

A I didn't even endorse Brashear myself.

Q Well, my question to you is isn't that true?

A No, I am not aware of that.

Q Are you saying that he was endorsed by the DCRG?

A I am saying I wasn't interested in Mr. Brashear's race. And people that I am not interested in their race, I don't support them and I don't keep up with their endorsements.

Q So then your testimony is that you wouldn't know anything about Mr. Brashear's race, isn't that right?

A That's correct.

Q That's fine. Now, being involved in politics, Mr. Kirk, I assume you are also aware of the cost of running a campaign, are you not?

A Definitely so.

Q Politics can be a pretty expensive game, isn't that correct?

A It could be.

Q I assume in your experience in helping

in county-wide races, you found it to be expensive, would that be a fair statement?

A No, I can't say that.

Q What has your experience been , Mr. Kirk, with respect to county-wide races and their costs that you have observed based on your own knowledge?

A I know that you can run county-wide and it don't take that much money to run county-wide. As a matter of fact, you can even run a campaign on the telephone. We call it the boiler room. From various volunteer groups. It can be done. It does take a certain amount of money to run a campaign.

Q Well, you told Mr. Luna a moment ago, I think, that you yourself had thought about running for the Texas House, isn't that correct?

A Yes.

Q Well, I assume in thinking about that you have also had an opportunity to think about what it might cost ?

A Definitely so.

Q Can you share with us your observation and your investigation as to what it might cost to run for the Texas House, county-wide here in

Dallas County?

A County-wide, it would cost me less than three thousand dollars.

Q How did you arrive at that figure?

A My experience in running campaigns.

Q Can you share with us some of that experience?

A Yes, you get as many endorsements as you can from various groups, social, religious, all groups that will endorse you. You get as much free help as you can. The most expensive thing about the House of Representatives would be the filing fee.

Q Okay, based on your --

A One lump sum.

Q Based on your experience, what have you found the filing fee to be?

A Well, frankly, I haven't decided yet to run or not and I haven't really checked into it.

Q So you don't know what the filing fee is?

A No, definitely not.

Q Have you investigated the cost of mailing out information to the voters county-wide?

A Yes, I know of this cost.

Q Can you tell us what you know about

that?

A Well, to mail to every voter in Dallas, Dallas County-wide, would cost you a beautiful piece of money. It would cost you well over five thousand dollars.

Q So on a three thousand dollar budget, you couldn't make a county-wide mailing, would that be correct?

A No, definitely not.

Q Of course, I assume as you told us a moment ago, you worked in the Post Office Department?

A Right.

Q And I assume you are familiar with the cost of handling and delivering mail?

A Yes.

Q All right, so --

A Let me answer this question. You made the statement that I couldn't make a county-wide mailing --

Q On a three thousand dollar budget now.

A Well, it definitely wouldn't be necessary. As far as a black man is concerned, running a race in this town, you are concerned with more or less the black carrying the black area and a certain

amount of sympathetic whites would definitely have to go along with you. That is where the cost is, in the teas and receptions and invites come in which are done in various parts of the city like that.

Q Now, Mr. Kirk, being a black man, you know that Dallas is still a fairly segregated community, is it not?

A Definitely so.

Q It is still segregated as to housing, is that correct?

A The whole field is still --

Q Housing, schools --

A Yes.

Q -- employment?

A Yes.

Q Wouldn't that be a fair statement?

A Definitely so.

Q How can you as a black man say that you can run and be elected county-wide in Dallas County with Dallas still being the segregated community that it is?

A It has been proven.

Q How?

A Zan Holmes did it. George Allen did it.

Q Well, I am talking about -- we are talking about the Texas Legislature. Just for the moment, let's limit ourselves to the House of Representatives. And there are only two men who did that, is that right?

A Lockridge and Holmes, right.

Q Both of those, I believe, you told us had the support and endorsement of the DCRG, is that correct?

A No, I didn't say that. Zan had it and I pretty sure that Lockridge had it. I'm not sure whether Lockridge had this endorsement or not.

Q Well, based on your experience in Dallas County politics, it is important to have their endorsement, is it not, the endorsement of the DCRG?

A It would -- on all candidates, it would be of help to some extent, yes, to have it. It is definitely not essential to have their endorsement to get elected. Just like you don't need labor's endorsement to get elected.

Q Can you name us all the blacks who got elected to Texas House seats who have not had the DCRG endorsement?

A I only know of three that has run for the

House of Representatives.

Q In other words there haven't been any, isn't that correct, Mr. Kirk?

A I can't say that.

Q Now, I think you told Mr. Luna a moment ago that you were also familiar with the political realities here in the county with respect to the Mexican-American?

A Yes.

Q Have any Mexican-Americans been elected to the Texas House of Representatives here in Dallas County?

A I don't know of any that has run since I have been in politics.

Q So then the answer to my question is there have not been any that have been elected, is that right?

A That's right, to my knowledge.

MR. COLLINS: I believe that's all the questions I have.

REDIRECT EXAMINATION

BY MR. LUNA:

Q I have just a couple of other questions. He has asked you about the cost of mailing. Because of the cost of mailing being so high, is

that why so many political campaigns have gone to the use of the telephone and what we call the boiler room system, the use of telephones?

A Definitely.

Q Is that a much more economical way to reach voters, although it takes more work than writing a letter?

A It takes more work and it is more effective than writing a letter.

Q On the effectiveness for the black community and the county-wide delegation, Mr. Kirk, I'm going to ask you whether or not you are familiar with a year or two ago a problem with the elevated highway in the Spence community, do you recall that?

A I am very familiar with that.

Q Now, the Spence community is in a black part of town, is that right?

A Yes.

Q And was the black community very, very displeased about that elevated highway coming through the black part of town because of the fear of rapes and robberies and other crimes that might be committed under that highway?

A Yes.

Q Was there an effort made to get it lowered?

A Yes.

Q Would you tell us something about how that happened? Do you know about the methods that were used, who helped them with respect to the legislative delegation, did the legislative delegation help?

A Definitely, Rev. Zan Holmes.

Q Now, we have got, what, fifteen members of the delegation from Dallas?

A Yes.

Q And did -- there is a single member legislative district in Ellis County, an adjoining county, that is closer to the Spence community than Irving, Texas, which is in Dallas, isn't it?

A Yes.

Q And Carrollton, Texas, which is also in Dallas County?

A Yes.

Q Do you know Representative John Boyle of Irving?

A Yes.

Q And Representative Jack Blanton from Carrollton?

A Yes.

Q Those folks, although they are white, in the general election, would not have been elected had it not been for the black vote, would they?

A That's right.

Q And therefore when it came time to get that highway lowered, did they with all of the rest of the fifteen representatives in Dallas join with Mr. Zan Holmes in calling on the Highway Commission to lower that highway?

A A united effort by the House of Representatives to get the highway lowered.

Q From the Dallas County delegates?

A Dallas County, yes.

Q Now, the single member district, which is down in Ellis County, which was not voted on by the people of the Spence community, did not help, did they?

A That's right.

Q Did that accomplish a good purpose for the black community that they were unable to accomplish without that assistance from the House delegation?

MR. COLLINS: Let me interrupt

SANDY GLANCER
Deputy Supervisor
748-5481

just a moment, Mr. Luna, I --

MR. LUNA: I withdraw the question.

MR. COLLINS: I hate to object on the grounds that it is leading, but I feel compelled to inform you at the time of trial we would have to object.

MR. LUNA: I pass the witness. I stand corrected.

MR. COLLINS: We don't have any further questions at this time, but put this in the record, please. Mr. Kirk, would you mind waiting here just a few minutes since I may have a few more questions later on. I don't intend to keep you waiting long. Would that be agreeable with you?

THE WITNESS: Yes.

MR. COLLINS: Thank you very kindly.

MR. UTAH KIRK

STATE OF TEXAS |
|
COUNTY OF DALLAS |

SUBSCRIBED AND SWORN TO by the said witness, MR. UTAH KIRK, before me, the undersigned authority, on this the ____ day of _____, A. D., 19____.

_____
NOTARY PUBLIC IN AND FOR
DALLAS COUNTY, TEXAS

STATE OF TEXAS I
I
COUNTY OF DALLAS I

I, NANCY C. BLINKER, a Notary Public duly commissioned and qualified in and for the County of Dallas, State of Texas, do hereby certify that, pursuant to the Notice and agreement hereinbefore annexed and set forth, there came before me on the 31st day of December, 1971, at eight o'clock, A.M., at the office MR. JOHN COLLINS, 1600 National Bankers Life Building, Dallas, Texas, the following named person, to-wit, MR. UTAH KIRK, who was by me duly sworn to testify the truth and nothing but the truth of his knowledge concerning the matters in controversy in this cause; and that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, and that the signature of the witness to his deposition was to be before any Notary Public.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the

action.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, A. D., 19____.

NANCY C. BLINKER, NOTARY PUBLIC
IN AND FOR DALLAS COUNTY, TEXAS

My commission expires _____, 19____.

NANCY BLINKER
County Clerk
748-5581

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES ET AL — CIVIL ACTION NO. A-71-CA-142
VERSUS
BEN BARNES ET AL

Bock

DIANA REGESTER ET AL
VERSUS — CIVIL ACTION NO. A-71-CA-143
BOB BULLOCK ET AL

JOHNNY MARRIOTT ET AL
VERSUS — CIVIL ACTION NO. A-71-CA-144
PRESTON SMITH ET AL

VAN HENRY ARCHER, JR.
VERSUS — CIVIL ACTION NO. A-71-CA-145
PRESTON SMITH ET AL

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ATTORNEYS FOR DEFENDANTS
STATE OF TEXAS ET AL

ANSWERS AND DEPOSITION of MR. GEORGE BOCH, produced as a witness at the instance of the Plaintiffs, Diana Hagester et al, taken in the above styled and numbered causes on the 31st day of December, A. D., 1971, at 2:00 o'clock p.m., before Linda Eidd, a Notary Public in and for Dallas County, Texas, at the offices of MELLINAX, WELLS, MAUZY & BAAB, INC., 1601 National Bankers Life Building, in the City of Dallas, County of Dallas and State of Texas, in accordance with the agreement hereinafter set forth.

A G R E E M E N T

It is hereby agreed by and between the parties hereto that this deposition is being taken under the same agreement that was adopted and made a part of the depositions of the Members of the Redistricting Board that were deposed this week.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that the Notary Public taking this deposition may return and file the same without the signature of the witness thereto, said signature of the witness being waived by all parties, and said deposition to be used on the trial of these causes with the same force and effect as though the same had been read and signed by the said witness.

MR. GEORGE BOCH,

a witness named in the annexed agreement, being of lawful age and being first duly cautioned and sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. COLLINS:

Q Will you state your full name for the record, please, sir?

A George Boch.

Q Any middle initial or name?

A None.

Q Your address?

A 6845 Sperry Street, Dallas, 75214.

Q Business or occupation?

A Contractor.

Q Is that construction contractor?

A Building construction.

Q Okay. How long here in Dallas County, have you been here in Dallas County?

A Except for six years in the Military Service and five or six years just prior to World War II all of my life since I was eight years old.

Q Mr. Boch, as I understand it you have been served with a subpoena to bring some records here with you in your capacity --

A Right.

Q -- in the organization of the Democratic Committee for Responsible Government, is that correct, sir?

A That's correct.

Q Can you tell His Honors just what your position in that organization is, please?

A I was elected as Temporary Chairman a year or two ago and they haven't replaced me yet.

Q Do you know who any of the other officers of that organization are?

A I don't remember who was elected Vice-President. I believe that Jack Henson is Secretary. When I say Vice-President I don't believe there is any second to me. I think we have -- I don't think we have a Secretary named Jack Henson and a Treasurer named Yeldell, Clifford Yeldell, Y-e-l-d-e-l-l (spelling).

Q Is he on the Board of Directors -- yes, he is I believe, okay. Let me ask you that: Is Mr. Yeldell on the Board of Directors?

A Yes, he is on.

Q In response to the subpoena I think you have brought with you here two particular documents which I would like to ask the court reporter to mark at this time.

MR. COLLINS: Mark those as two separate exhibits, please.

(Whereupon the instruments handed to the reporter were marked Regester Plaintiff's Exhibits 1 and 2, which are hereby attached and made a part of this deposition)

Q Mr. Rech, I hand you what has been marked in the record for purposes of your deposition as Plaintiff's Exhibits Nos. 1 and 2 and ask you to look at those and tell the Court what those are, please.

A No. 1 is a copy of the Constitution and By-laws of the organization dated December 1970. No. 2 is a list of the Board of Directors that are presently serving.

Q Now, I noticed that Plaintiff's 2, the Board of Directors, also indicates for the years 1970 through 1972, is that correct?

A That's correct.

Q Do you know whether or not a list exists for years prior to 1970 with respect to your Board of Directors?

A I'm fairly sure that there never has been a prior list of Board of Directors ever even published. If it is I don't know of its existence.

Q Say prior to December of '70 with respect to

Plaintiff's Exhibit 1 was there a prior Constitution and Bylaws?

A Yes, there was. I have seen that. This was amended just prior to the date of this one, before December of 1970.

Q Do you know where a copy of that might be, of the prior existing Constitution and Bylaws?

A I personally might have a copy.

Q I would ask you when you get back home some time this weekend if you would be kind enough to check and see if you do have a copy of that and if so would you be kind enough to furnish that to Mr. Luna?

A I would be glad to.

Q All right, sir.

A I think I know generally the changes that were made but I can recognize it when I see it.

Q Mr. Boch, just a word or two about the D.C.R.G. Can you tell us a little bit about when and where and by whom it was organized?

A Yes. I was not very knowledgeable in the mechanics of politics in 19 hundred and 66/65 when Joe Rich asked me if I would be his campaign manager. And he told me the duties would be light and he would tell me, or I would be informed of what I would have to do. After the filing date a number of people -- Well,

first let me say that his campaign and his volunteering to run for the office was based on --

Q How, this is what office, please?

A County Chairman. Was based on a commitment from a number of us that we would help elect precinct chairmen similar in ideology to him on the Executive Committee. Well, once those peoples' interest was excited and they volunteered to serve, they then became interested in the campaign to elect him and themselves. There weren't any funds available to them at all and he had very little but he was trying to direct the campaign for both of them and his public relations firm was and we just felt like they were too restrictive. We had a lot of possibility of a lot of volunteers that had validity and who had originality and yet they weren't being used and so I and two or three of these other people went to him and said let's just disconnect the precinct chairman from you, let them do anything they want to to get themselves elected, let them make any mistakes that you think they may want to make, but let's sever the two. And he said, "What will they use for money?" And at that time I told him, "Well, there's about $2,000.00 in the -- that you have. Let's just tell them to go ahead and spend a thousand dollars and we'll just honor the bills." And so he agreed and

within three days they had their own organization set up and they never did use the money.

Q About what period of time was all this taking place?

A In the spring of 1966. The no-form organization was formed. This was just a group of people that worked together to elect precinct chairmen.

Q Can you tell me just briefly who some of these people were?

A Yes. Gene Wright was a leader; he's not in the city anymore; if he is he's very quiet and I don't know it. A number of the precinct chairmen who are still on the committee. I was in the group. Let me see if I can refresh my memory out of this.

Q Okay. Look there on Plaintiff's Exhibit No. 2 and see if you can refresh your memory.

A Bob Gibson was active in it; he's a member of the Board here. Johnnie James was active, Lonnie Wilson was active.

Q What about Mr. Melton?

A Not particularly active, no. He just ran as a candidate. This was generally people who had never before participated. That was one reason Joe was apprehensive of the action. These were people who hardly even knew what a precinct chairman was and suddenly were

running for the office of Precinct Chairman. For instance, one of my competitors, Wyatt Cheek, who didn't even know what a precinct convention was. This whole thing was new to him and innovating and invigorating and they just got with it.

Q Have you yourself ever been a precinct chairman?

A No.

Q Have you ever run for the office of Precinct Chairman in the Democratic primaries?

A No.

Q Have you ever held any public office yourself?

A No. The Precinct Chairman elected me as Secretary of the Democratic Party. That's not a publicly elected office.

Q When was this?

A At their organizational meeting right after the last primary.

Q This was the primary in '70?

A Uh-huh.

Q 1970?

A Uh-huh.

Q And do you still hold that office?

A I still hold it.

Q How long have you held the office of Temporary Chairman in the D.C.R.G?

A I was elected at their last annual meeting which I guess was right after the last general election.

Q That would have been November of 19 --

A The meeting may have been held in November or December. Within a month or two after the --

Q Of 1970?

A Right.

Q So you have held that temporary chairmanship since that time?

A That's correct.

Q To the present?

A That's correct. Prior to that there was no chairman. The agreement was that anybody could call a meeting and anybody could serve.

Q Prior to the time you were elected Temporary Chairman what was Mr. Rich's function in the organization?

A The rule -- when the organization was first or when they first decided to formalize an organization was after Rich got elected.

Q That would have been when?

A In 1966. They decided that they had worked

with each other so well and they enjoyed it that they thought the organization ought to be formalized and just keep it up. So I think fifteen or twenty of us met several times and hacked out a Constitution. But at that time I feel sure the Constitution provided that there would be no elected office to the organization, that anybody that wanted to could call a meeting and he would preside over that meeting. If my memory serves me correctly this is the first time they have ever elected anybody with a title, this last time.

Q Say prior to the time you had obtained the title, how would you describe Mr. Rich's participation in D.C.R.G.?

A I failed to answer your question; I'll answer it now. The rules were that any elected official could not be a member. He's automatically out if he has been participating. He's not allowed a vote or anything. They may discuss things with him and may talk to him but once elected he's through; he has no vote.

Q So Mr. Rich was not a member of the organization, is that right?

A No, he never was even before and after elected he was ineligible. They want to view the County Chairman's conduct just as well as they want to review anybody else's. And they just exclude him from having a

LINDA RICE
Certified Court Reporter
(214) 653-5641
DALLAS, TEXAS

vote; he is not a member.

Q Mr. Rich then was not a member of the D.C.R.G.?

A No.

Q Now, let me ask you this question, Mr. Boch: How long have you yourself personally been associated with the D.C.R.G.?

A Well, I was one of the originators of both the first and the informal organization where it had no name and later on after the 1966 primary in which they adopted a name. Well, they did adopt a name I believe before the election. I think they decided they had to have a name and so they just decided on this name, the Democratic Committee for Responsible Government. They had to have a name; I recall that.

Q Refresh my memory on how long Mr. Rich served as the Democratic County Chairman.

A He was elected twice and resigned about six or eight months before the filing date for the third term. He was elected once and then again and then resigned before that term was over.

Q Let's kind of pinpoint that for the record, just from a rough estimate standpoint as to when, approximately when he resigned.

A I would have to guess probably in the latter

part of 19 hundred and 69. That's a guess.

Q All right. Now, from that time to the present has Mr. Rich held any position, office or otherwise in the D.C.R.C.?

A No. He was nominated on the floor of their meeting to be a director and at that time made a statement that he didn't want to be a director unless he saw which direction this organization was going and he proposed some Bylaws which the group turned down and he refused the nomination so he was never voted on. He's never held office in the organization if that answers your question.

Q All right, fine. What is the present address of the organization?

A Well, the only permanent address we can afford is a post office box 50025, Dallas. Now, what we are going to do or what we are thinking about doing, there's some office space available here that we are going to have to try and move into to get ready for whatever we have to do, and don't have a room any more bigger than this, to get ready for the election of the Precinct Chairmen that they ask to file for the offices.

Q You are talking about now the upcoming election for '72?

A Uh-huh.

Q Has the D.C.R.G. ever had an office based on your knowledge?

A There was office space provided us in a building in which Rich and his partner owns. We moved out of it and have never had a permanent home except one time. We had some space on Harry Hines Boulevard for about six months and something happened to our records, our furniture and all or part of it, and it disappeared and since then we have been just without really an office.

Q I think you said that Mr. Rich and his partner did provide office space, is that correct, at one time?

A Yes, his partner is a member of this Board.

Q In what city?

A Always has been. Ernest Wright. He lives at Garland.

Q I think his address is shown on Plaintiff's Exhibit 2 as 2727 Cedar Springs?

A That's the business address.

Q That's the business address?

A Uh-huh.

Q I assume that address has been used for mailing and telephone purposes before?

A Well, Rich printed stationery or we used it

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as that address and even used the same paper after we moved out of there for a long time unthinkingly and then we got the post office box. And I found out later we had a telephone number on there that wasn't even ours and we removed that. Or at least when we have a letter reproduced it's still on the paper and just scratch it out.

Q Whose telephone number was that?

A Well, it was a telephone number that was in Rich's office. And when the County Chairman's office was transferred I guess the thing went with it, I don't know. I don't know whose telephone number it is frankly. We have never had a telephone number listed to my knowledge.

Q Of course, Mr. Luna who is here today is one of the lawyers in this case for some of the parties. Has Mr. Luna ever been associated with D.C.R.G.?

A He was before he was elected.

Q What was Mr. Luna's association?

A Just as an ordinary participant.

Q Just as a member of the organization, is that correct?

A When I say member I have to say that advisedly. We say in our Constitution a man has to make written application. I don't think that's ever been in-

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sisted upon and I can't really tell you that anybody is a member except he did participate.

Q About the written application, did you ever make a written application to join the organization?

A Those of us who first wrote the Constitution did and I think it died there just simply through inertia. We don't have the overhead or the organization to handle these things and procedure and we just forget it.

Q So if I understand you correctly then that part of your Bylaws just more or less fell into disuse?

A It's just like a dead statute. This is not a formal organization.

Q Has Mr. Luna ever been on the Board of Directors for example?

A I don't believe he has.

Q How do you determine who is a member and who is not a member of the D.C.H.C.?

A As I say we don't have a formal list and whoever is a member usually is somebody who will participate and we don't go through these formalities. We assume every Precinct Chairman who accepts our endorsement is one of us. We assume if someone wants to hand that Precinct Chairman ten bucks to buy stamps with that

he's with us or if they support him maybe at a precinct convention. We don't have a list of all these people but --

Q Is it your testimony that you do not have a membership list?

A No, we don't, really don't. I mean a formal list of people who say "I'm a member of D.C.R.G." If I say they are a member that means one thing. I don't honestly say this man will say "I'm a member."

Q Let me ask you this: If you wanted to send out a mailing to your membership how in the world would you go about it?

A Okay. We'll take the Board of Directors, we'll say send the Board, we'll take the Precinct Chairmen that we have endorsed and then we may say on the letter "Friends." If we say "Friends" it's any group of people we want to pick, depending. Sometimes we just mail them to some members of the legislature, sometimes it's mailed to County Commissioners, sometimes we'll say, "Well, let's mail them through -- let's go through those precinct convention lists and pick out the delegates and mail every fourth or fifth one, just as many as you can get typed up through volunteers."

Q As I understood you a minute ago when you and I talked informally here as we were going over your

records, I think you told me you do not have any correspondence, is that correct?

A To my knowledge correspondence as such we have never used. We send out sometimes a little bulletin to these people, if that's correspondence that's correspondence but --

Q I'm talking about say letters to people, formal letters to individuals saying "Dear Mr. Jones, we have this problem. We want your help."

A There might be an occasional letter where we'll write somebody to thank him for something or something but it's a rare thing.

Q Who would have those records?

A I may have written as many as two or three, I don't recall them, but I don't even keep copies. We have no files on that record at all that I know of.

Q What about Mr. Henson, the Secretary, does he have any files or records?

A Well, Henson is a District -- has been a leader over there in that part of town. Whatever files he has would be personal like mine. I've got personal files of my personal participation but I can't honestly say they are D.C.R.G. files. I take newspaper clippings and clip them out and save them.

Q I'm talking about primarily correspondence

that -- Well, first instead of assuming something let me ask you this: Does the D.C.R.C. have a letterhead?

A We have a letterhead which we use and we will print on it and make a distribution like a bulletin.

MR. LUNA: Can we go off the record?

(Whereupon an off-the-record discussion was held, after which the following proceedings were had:)

A The organization has never yet sent a letter to my knowledge to any particular person. There may have been somebody say we ought to thank so-and-so and they ought to do it on the organization's stationery. Seems like somebody asked me to do that a little while back and I might have sent the letter on -- I may have signed it.

Q I think you told me a minute ago that you do have letterheads, is that right?

A We have letterheads.

Q Physically where are those?

A Right now they are wrapped up waiting to find a home. I have a little box in my office, one box, and I have probably five thousand envelopes in my warehouse. Now, whatever else we own, and I don't know

what we own, is in storage and I've got to get a home for it within the next four or five weeks.

Q Do you know who put this in storage or why it was put in storage?

A For lack of -- we don't like to pay rent.

Q Was this after you moved out of Mr. Rich's office or something?

A Well, we moved from Joe Rich's office and moved to this address on Harry Hines and we had that space and I don't recall the address, but we had it, and another person and I went there one day and found out the whole thing was vacant, files and everything that we had there. Now, we had some stuff in my warehouse but what we had there we were currently using was just completely gone and when we tried to track it down we couldn't find it.

Q How much floor space did you have in that office?

A Well, at that time this building had space to rent, we probably had as much space as these two rooms although we didn't use them. For our purposes during the campaign a space as big as this room would suffice.

Q Did you have any telephone numbers other than Mr. Rich's number at his business?

A. There was a phone in there and what the number was I don't know. I don't think I ever used this phone or called into that office. It was unmanned; we had no employed personnel.

Q. That was going to be our next question. Did you ever have any secretaries that you hired to do your work?

A. Sometimes we'll contract out -- well, sometimes we'll contract out something or go to some public place and have them type it but as a general rule it's just a voluntary effort. We have women who are willing to volunteer or something like that. We don't have a payroll.

Q. I assume you don't own any typewriters or office equipment?

A. Yes, I'm pretty sure we own one typewriter or maybe two. I'm pretty sure we own maybe about -- I'm pretty sure we own one and maybe two. I wouldn't say we owned two; I think we do.

Q. When you go to send out one of these mailings or bulletins or whatever you want to call it how do you physically go about doing that?

A. Well, we have to get a letter typed. We take it down and get it reproduced. We never address -- we never do type the letters individually. Usually we say

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we are going to have a hundred or two hundred, three hundred, five hundred or several thousand maybe if they get it reproduced.

Q. Get it printed or Xeroxed or something?

A. Xeroxed or Itek or whatever the process is. It's a matter of six, seven, eight, $10.00 or $5.00 or whatever it costs, maybe less than that for a hundred. We have an old addressing machine that's not an Addressograph, it's some other type, and what we'll try and do is keep that thing current by groups of the Board, the Precinct Chairmen and maybe some people who made donations and some other interested parties and we'll just tell them, "Now, pick this crowd generally" or we'll personally select which ones and then they will run these plates through this machine and address the envelopes. It's a tedious job; it's a voluntary effort.

Q Do you ever contract out any of that work for getting out your mailings?

A The addressing?

Q Yes.

A I don't know if the organization as such has ever done it. What we'll do when the primaries come along for the Precinct Chairmen, we look to them to pay their own expenses. Now, some of them will pay their own totally. Some will volunteer to put in enough to

take care of those who can't afford it and we will do brand buying. We may go down and buy thirty or $50,000.00 envelopes and just resell them to those people to save them some money.

Q You said thirty or $50,000.00 envelopes. I think you meant to say thirty or fifty thousand envelopes.

A Right. The majority of the times if they place the orders with us we'll place a bulk order, save money and distribute it, and those who can afford to pay us more we collect from and those who can't afford we'll give it to them.

Q How is this money collected for all these mailings and so forth?

A We just ask each coordinator and each party across town. They try to raise their own funds and when

Q Now, does any of it ever go through your Treasurer, Mr. Teldell?

A Not as such. Now, if we have money in the treasury and somebody made a donation to us on something and we collect a little bit, there's a fellow that says, "I've got two chairmen here and I'm out of money," why, we'll fund him some money.

Q I assume you keep a bank account or something

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some place?

A We have a little bank account.

Q Where is that located, please, sir?

A First National Bank.

Q Who are the people that are authorized to write checks on that account?

A Two signatures out of four or five or six people. Mine, Clifford Yeldell, Bill Dowdy and Jack Henson and lately I think for either convenience, because they are hard to get, I think maybe Betty McDonald, I'm not sure.

Q Who is Betty McDonald?

A She's on the Board there.

Q Do you know what she does?

A She's a housewife.

Q Does she work outside the home anywhere?

A Well, sometimes she works in the Party office. She helps Earl; she doesn't help me a lot.

Q Now, who physically keeps your checkbook and your bank accounts and that kind of thing?

A Checkbook, I tried to get a hold of Clifford Yeldell yesterday and got a hold of him late and I forgot to ask him that question. I don't -- I had it until about six months ago and I gave it to him. And since then I haven't -- I don't know that -- I can't

tell you where it is right today. I can find it for you by Monday or Tuesday. The bank account, the bank mails me the statements.

Q The statements come to you at your home, is that correct?

A No, they come to my office. And right now they are part of this stuff we are fixing to move out there in this new office. I gave them to somebody else and that's where they are. I would have to locate exactly where they are. I didn't have time yesterday when I got this thing. I thought about it and I didn't have time. We don't have a lot of money in this account. We've got twelve hundred, thirteen or $1400.00 if we are lucky. We never have been rich.

Q Let me ask you this question: About how many members would you estimate you have now?

A Well, if I say member and then I named a man's name and you went to him and he said, "No, I'm not a member." When we say D.C.R. -- usually these bulletins are addressed D.C.R.C., Precinct Chairmen and Friends. We don't say members. I'm very careful about that; I try to be careful anyway.

Q Say how many would you estimate in terms of people who are obviously on your Board of Directors and those friends or members, can you give me a rough esti-

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mate?

A Well, we can assume this, that every Precinct Chairman whose active and organized the precinct convention and got delegates there, and we know who the delegates are, we can assume they are our friends. If somebody gives us a little donation we can assume that they are friendly. Now, I use that word friends rather than members just for that reason.

Q Okay. Mr. Rich I think, I have been informed, is out of the city. Do you know where he is?

A I heard he was in Europe.

Q Do you know whether or not he has any records of the D.C.R.G.?

A I sure hope not. He's not suppose to have them.

Q Who in your organization would be responsible for seeing that political candidates receive help from your organization?

A No one other than Precinct Chairman. Now, in the Precinct Chairman field we divide this up and don't see to it that they see help. We see to it that they do their homework to get elected, that they know how to hold a convention, that they know how to hold an election, that they know the rules, the political rules, the ground rules, that they organize the convention

basically. And also that they do their campaigning which would include if necessary financing but we don't offer financing unless they just say they can't afford it, unless it's obvious.

Q Now, financing to the Precinct Chairman or --

A Yes, Precinct Chairman.

Q Or to the public officeholders?

A Precinct Chairman is all that we offer help to.

Q You don't offer any help to say candidates for the State legislature?

A No. As a general rule if money is needed they fund it to us to help in our effort. We -- this is a volunteer organization and if the Precinct Chairmen are willing to do it and it's fairly unanimous among them, well, I'll say this, if a group of them object to a candidate his participation in their election is out. But if they are willing to do it and if they volunteer to do it they will write letters endorsing these people, whoever they want to endorse.

Q All right, let me be sure that I understand what you are saying, Mr. Bock. Is it your testimony that the D.C.H.D. has not, as an organization, has not offered to help candidates for the Texas House of Representatives?

A It's generally the reverse. Now we help them but not money. It's generally the reverse in the flow of money, that they would have to help us finance. Now, I don't know, I can't tell you that any candidate for the legislature ever funneled money to us for that purpose. An individual Precinct Chairman, suppose he doesn't have an opponent but he wants to write a letter to his precinct. If he wants to endorse these people he does so.

Q But the organization as such, D.C.R.G., does not make say political money contributions or money contributions to political candidates for the Texas House of Representatives?

A Not as such, no. Individually we have done this, some of us. I haven't personally. I can tell you this I don't believe -- we helped them last time but I don't believe we bought a billboard or a spot on the radio. We may have paid for two newspaper ads, full page ads or three quarter page ads, lising our Precinct Chairmen and listing these people we want of course in the legislature.

Q What about TV ads?

A To my knowledge we haven't paid for a single one.

Q You know a representative named Sam Coats,

do you not?

A Sam got his own money some place. We didn't do that.

Q In other words, you didn't contribute any money to Mr. Costa' campaign last time?

A No, not in the primary, not individually in the primary we did not. We did help the slate that we endorsed as a group simply through the efforts of the Precinct Chairman. In other words, whatever they wanted to do. If they wanted to endorse them a group of us handled the printing of the slate cards but this was not a D.C.R.G. effort. And before we print these slate cards, before we put names on them, if a group of them objected to any particular candidate, statewide or local, it was left out of that particular area, that particular district. Like in the Commissioner's race we had to reprint a bunch of them because there were a lot of objections so we took them out. We don't run over them, and we don't dictate what --

Q So you do put out slate cards then, is that right?

A Well, a number of us individually looked after it. We put the slate cards together, packaged together, and based upon the recommendations of a group of people, all Precinct Chairmen, no downtown influence

of any kind, this was strictly Precinct Chairman.

Q Have you ever put out a slate card with the D.C.R.G. name on it?

A It may have had the D.C.R.G. name on it last time. If so it was the first time. We even took off one state-wide judge off of it because they objected. In other words, they -- we don't lead those people. We do what they ask us, what they are willing to do and what they ask us. This is strictly -- it's a voluntary organization and we know as long as we keep it that way we'll have some impact in the community.

Q Would it be fair to characterize your organization in terms of the political spectrum as being more conservative than say using the labels more than liberal?

A I would think so. They've used the term. Actually we use the word responsible. Now, we are labeled a conservative organization. When we put the thing together we felt like it was too much innuendo connected with these labels, liberals and conservatives, so we just chose the word responsible.

Q Is it your testimony that you really don't like to use these labels, is that --

A I don't. My own personal reason for getting into politics was not ideological. It was in the fact

that in my own precinct I witnessed a complete misrepresentation of facts. When a man got himself elected as Precinct Chairman I was totally ignorant of the job. I happened to be accidentally present when they conned him into running. And the letter that this precinct got was the most amazing thing in the world. His wife's name was Annie. He had four children and he worked in the Boy Scouts and taught Sunday School and would like to be Precinct Chairman. He got hisself elected. And that man, if his alliances were known, wouldn't have gotten twenty per cent of the vote. That first excited me politically to get active.

Q That more or less got your attention politically, is that correct?

A Well, that and the conversation at a little coffee that a woman was giving down the street that I wasn't even invited to except my neighbor said, "Come on in." I said I wasn't invited and he said, "Oh, it's just a little neighborhood meeting." I don't mind telling you who was there. Mr. Wells, a member of this firm. In a little fourteen hundred foot cottage. I think Mrs. Wells was there. Jim Choate was there, Mr. and Mrs. Blessing was there. And the pitch was that Joe Cockrell, the old Precinct Chairman, who his wife had divorced him, they couldn't locate him --

MR. LUNA: Excuse me, Mr. Boch. I don't believe he asked you that question.

THE WITNESS: Okay.

MR. LUNA: If you'll just answer the questions he asks we'll get through a lot quicker.

Q Let me go to something else here, Mr. Boch: Do you know whether or not your organization has ever taken the position with respect to the issue involved in this lawsuit, namely single-member legislative districts, or one of the issues involved in this lawsuit?

A We have taken a stand on the thing.

Q What was the effect of that stand?

A The effect of it was we are for multi-member districts. We feel like we represent the majority of thinking of this county. That's the reason for it, as reflected by the way they vote. If they wanted to vote otherwise they could vote Republican.

Q Assume you talked to--before you endorsed or put out slate cards for candidates I think you already told me that your organization discusses these people?

A Right.

Q Do you ever talk to the candidates themselves to see what their views are, to candidates or potential candidates?

A The last time was the first time we had got into legislative races or anything above the level of Precinct Chairmen. Our thinking was this:

Q By last time you mean when?

A The last election, 1970. We pull the wagon as we like to help load it, we think we ought to help load it, we ought to take an interest in things. So we decided to interview people and we made up our minds then we would encourage certain people to file and if they filed we would support them, we would help them. So before the filing date we had told people if you will run we'll back you, we'll help you, we made these commitments.

Q I think as a matter of fact you may have even sent out a letter on that, didn't you, Mr. Boch?

A Well, I don't think I offered at the time; I might have. A number of people --

Q I'd like to have something marked as an exhibit, please, sir.

MR. COLLINS: I'll ask the court reporter to mark this as Plaintiff's 3.

(Whereupon the instrument handed to the reporter was marked Register Plaintiff's Exhibit 3, which is hereby attached and made a part of this deposition.)

Q I'll ask you to look at that Plaintiff's Ex-

hibit No. 3, Mr. Koch, and see if you can identify that. Obviously it is a copy, not an original, of a letter that was mailed to a number of people. If you would take the time to please examine that.

A What do you want me to say about it?

Q I'll ask you this question: Have you ever seen that letter before?

A I feel sure that I have.

Q And I notice up at the top of the letter there's a letterhead, is there not?

A Democratic Committee for Responsible Government.

Q Yes, sir. And down at the bottom there's an address, is there not?

A Right.

Q What is that address, please?

A 2727 Cedar Springs.

Q And that address belongs to whom?

A Wright-Rich & Associates, Architects.

Q There's also a phone number there, is it not?

A That's his company phone.

Q So that's Mr. Rich's phone number for his --

A Right, that's right.

Q -- business, is that correct?

A Uh-huh.

Q If you just briefly look at the addressees at the top of the letter, can you identify those people or characterize them as a group as to what office they may be interested in running for?

A They were running for the legislature. We were asking them to run for the legislature.

Q As I understand it the essence of the letter would be that you want to support those people if they will offer themselves to run; would that be a fair characterization of the letter?

A That's right. I'm looking for my name but I don't see it.

Q I don't see it on there either, Mr. Boch. Do you remember when that letter went out?

A Before the filing date obviously because some of these people didn't file. At least one of them, Bernie Landrum, did not file. He's the only one I guess that did not.

Q I believe the letter does have a date on it by at the top.

A Oh, yes, December the 23rd, 1969.

Q Does that meet with your best recollection as to about when it went out?

A I'd say that was about right, uh-huh.

Q The people of course listed at the bottom of

the letter, who are these people?

A Well, Bill Brewer was a Precinct Chairman, L. H. Brown was one, Joe Carpenter was one, Bill Clark is a lobbyist, Manuel DeBusk is a lawyer, H. F. Dodson is a preacher in a black community, Bill Dowdy is a Precinct Chairman, Glenn Dunn is a Precinct Chairman.

THE WITNESS: Am I going too fast for you?

MR. LUNA: Bill Clark is a what, a lawyer?

THE WITNESS: Bill Dowdy is, Bill (sic) DeBusk is a lawyer, yes.

A H. F. Dodson is a Precinct Chairman, Bill Dowdy was a Precinct Chairman, Glenn Dunn was a Precinct Chairman, Dr. Emory was a Precinct Chairman. Let me see if I can't say all of these were Precinct Chairman. Do you want me to identify them by name?

Q Yes, if you can.

A Bob Gibson was a Precinct Chairman, Lee Halford was one, S. J. Hay is a businessman, Jack Henson was Precinct Chairman, Johnny James was not then but he is now, Ennis Killingsworth was a Precinct Chairman, Roy Orr was not a Precinct Chairman, a businessman.

Q Mr. Orr now has another position, does he not?

A He's the Chairman of the State Democratic Executive Committee now.

Q All right.

A Joe Rich by that time had resigned, Charles Simons was a Precinct Chairman or had been.

Q Was Mr. Rich on the Board of Directors at that time, December 1969?

A At that time he must have been. This was after he resigned. I didn't think he had ever been but he must have been. Charles Simons was a Precinct Chairman, Forrest Smith had been and probably still was. Let's see, he got an appointment afterwards so he probably was a Precinct Chairman. Robert Smith, if he was not a Precinct Chairman, he had been. Dick Stroman is just active out at Pleasant Grove. Conway Thetford probably was still a Precinct Chairman, Jack Thompson was one, Paul Soderholer was one, George Wilhite is a businessman, Lonnie Wilson was a Precinct Chairman and Ernest Wright lives in Garland is a businessman, architect.

Q He was Joe Rich's partner, right?

A Yes. All but three or four of these were Precinct Chairmen.

Q So this is at least one letter that the organization sent out, is that fair to say that?

A I guess it is. I didn't even -- I had forgotten about this one.

Q Obviously on this copy there's not a signature but do you remember whether or not anybody signed that letter?

A I doubt if they did. The intent of the letter was probably agreed upon beforehand. But at that time before they actually rewrote this Constitution and named a Chairman, they didn't want to make anybody prominent so they just prohibited anybody having an office and anybody signing correspondence.

Q Let me ask you this question: Do you question candidates and potential candidates as to their views on various issues?

A Oh, yes.

Q What issues?

A Now, we don't ask them to take stands on specific issues particularly.

Q But you do ask them --

A We at least want to know them, we want to know if they've got any judgments against them or do you think could they afford to run, they know they are only going to get $400.00 a month, a lot of questions like that.

Q Do you ever ask any of the candidates or

potential candidates about their views concerning single-member legislative districts?

A At that time I don't recall whether we did or not.

Q What about now for the upcoming elections this spring of '72, have you been talking to any candidates?

A We have not talked to any of them formally as a group. Individuals have talked to some of them. We talked to several of them about the thing.

Q Would it be fair to say that your organization is interested in the single-member legislative district issue?

A I think it would be fair to sum that we are interested and as a citizen we have that right to be interested.

Q Certainly. But at least that's an example of one issue that you are interested in?

A Right.

Q And I assume that this is going to be an issue in the future that you will talk to candidates and potential candidates about, would that be a fair statement to say?

A Oh, I think so.

Q Now, directing your attention there, Mr. Book,

to Plaintiff's Exhibit No. 1, if you will, please, sir, the Constitution Bylaws of course there in the Article II or Roman Numeral Two states the purpose of the organization, is that correct?

A Right.

Q And in the last phrase it states that you will support their election to public office?

A Uh-huh.

Q With reference to outstanding individuals?

A Uh-huh.

Q Now, you have told me that you support them at the precinct level?

A (Witness nods head)

Q Is it your testimony that that is the only place you support them?

A Are you talking about Precinct Chairman or --

Q No; no, I'm talking about all candidates.

A After the primaries the people are elected. They are Precinct Chairman. And we who are on the Board, a number of us took the lead last time and asked them would they support the entire group of fifteen for election to the legislature and almost to a man they did and they volunteered. We just feel like we've got an investment in these people past the primary and we stayed with them until the general election. It was

not an act of the organization so much as it was an act of the individuals who were on the Board.

Q Directing your attention to Article III there I believe you told me that the written application bit about membership is part of a dead letter?

A Right. Let me add to that last statement: That included our support for Dick Reed. We took the whole package of fifteen and went with them.

Q Now, looking under Roman Numeral Three there under subdivision "A" with respect to Active Member --

A Uh-huh.

Q -- the person has to be -- In order to be an active member he has got to be one of four things, is that correct?

A Well, yes, although I can't say we have ever distinguished -- actually used this. We say Precinct Chairman, Board of Directors and friends.

Q Under Active Member there, under item three, "Persons that contribute or raise $25.00 or more per year."

A As I say we have never classified our members as active or supporting or associate.

Q Do you ever recall having solicited from people money to support your organization?

A When we originated the thing I wrote sixty letters asking them to donate money and they did, most

of the sixty responded. Other people have done the same thing. We go around and ask our friends, how about, we need some money for our Precinct Chairmen and we get some.

Q What about assisting candidates with mailings, do you own a stamp machine or meter?

A No.

Q What about mailing permits, that kind of thing?

A We had it and we dropped it. I think it was a permit, the kind where you mail out and they send you a bill or where you have the money -- We don't have that any more; we canceled it.

Q Do you recall why you canceled that mailing permit?

A It just didn't fit our needs. It was an expense we didn't need, to keep the money on deposit.

Q Now, there in paragraph four under your By-laws I assume that describes duties and functions of your Board of Directors and your district coordinators and that sort of thing?

A That describes how they are elected.

Q Right. And then on page two of your Bylaws under Officers you have a Chairman, Vice-Chairman, Secretary and Treasurer. And I believe you told me you

are the temporary chairmen. I don't believe you told me who the Vice-Chairman was.

A Well, I really don't remember if one of these were elected; I would have to find out.

Q And then Mr. Hanson was the Secretary and Mr. Voldell the Treasurer?

A I believe that's right.

Q Now, on page two there under item "E" there it says "Minutes" --

A On page two, "Minutes," okay.

Q "The Chairman shall have minutes taken of each Board and Membership Meeting and shall have copies of same distributed to all Board Members as soon as practicable after each meeting."

A Well, I have never distributed minutes. The man who is Secretary, and we don't have many meetings, had a tragedy in his family this last year.

Q That's Mr. Hanson?

A Yes, and he has not even attended many meetings until just the last month or two, we had one or two meetings, and he never has been --

Q Are there any minutes in existence to your knowledge?

A I don't have them if there are. Now, I don't know whether Josh ever took any, the first minutes.

LINDA GOOD
Computer Court Reporter
RT 64261
DALLAS, TEXAS

Before this year there were never minutes taken. I think this was one of the things that was put in these amended Bylaws in late 1970.

Q Would you be kind enough to check with Mr. Henson or someone else in your organization and see if there are any minutes and if so produce them to Mr. Luna, would that be satisfactory?

A Yes. Let me make a note of this.

Q All right, sir.

A You want minutes and what other do you want, those financial records?

Q Let's see, I made a brief note here. The earlier Constitution and Bylaws.

A First Constitution, okay.

Q Right. And I think your financial records, your checkbook and that kind of thing you told me you have, is that right?

A I think I have it.

Q If you will just have those available to produce to Mr. Luna, I don't know if we are going to need these or not.

A Okay. I will say this generally about this difference in the two Constitutions. This is a much longer one in which we formalized how the Board would be elected and where the officers would come from. Be-

Were they were just all elected at-large with no officers as I recall it.

Q Okay! Mr. Bosh, you have been very straightforward here with us today and I hope that you would continue with that. I would ask you this question, I want you to think about it very seriously! Can you describe for the Court the approximate number of black people who are active in your organization who participate in its decision making processes?

A Well, can I do it without naming names?

Q I would prefer names.

A Well, it's hard to say in decision making processes. There are two on our Board.

Q Who are they, please?

A L. H. Brown and the man named Dodson.

Q H. F. Dodson?

A Yes.

Q Okay.

A We seek the advice of others but on the advice of their own people that's all they want on there. They feel like they are subject to a lot of pressures.

Q That's all who wants on there now?

A Well, let me put it this way! There's a lot of pressures on them out there.

Q Now, you are talking about on black people?

A They are called Uncle Tom's and called this and called that so we just liberally hold the number down. We want to feel the community. We have at times tried to integrate the meetings of the Precinct Chairmen and the Precinct Chairmen themselves will come. Now, I think we have finally overcome a lot of fears and prejudice and I think in the forthcoming year we will have a whole lot better integrated meetings than we have had in the past.

Q When you say you tried to integrate the meetings with Precinct Chairmen, now when was the first integrated Precinct Chairmen meeting that you can remember?

A The first year. Well I'm saying this, of our organization.

Q Right, that's what I'm talking about.

A The first year, and we have always called them to the meetings and they come but not in the number that we would like for them to. Now, as far as the people that participate with us these Precinct Chairmen gave us long lists of people that supported them.

Q That supported the Precinct Chairmen?

A That's right, our Precinct Chairmen, the ones we supported. And I buried those somewhere and it

might take me a day or two to find them but I've got them somewhere. In other words, we know this: We can take the same thing we take out of the white precinct, those that go to the precinct conventions and when they bring a delegation down there to a senatorial district convention, votes with us, we assume that these people are our friends and are with us just like the white people. We have no way of making a distinction.

Q How successful has your organization been in the black precincts?

A We have elected about half of them, half of the Precinct Chairmen, win about half of the conventions.

Q What about the legislative races, do the black precincts support your candidates?

A In isolated cases. Now, with Zan Holmes they do.

Q I'm talking about in the Democratic primary.

A To a certain degree. They don't win the majorities.

Q What about --

A Wait a minute, let me take that back. In the primaries?

Q Yes, sir.

A They are not always opposed. I wish I had

brought those election returns.

Q That's all right, I'm just asking for your recollection generally. I realize you don't have the statistics available.

A In the black precincts I presume that Dick Reed may have gotten more votes than his opponent but in a lot of white precincts the same thing happened.

Q What about say in the race between Mr. Boyle and Mr. Brashear?

A Brashear got forty-five per cent of his votes in black precincts and fifty-five per cent of his votes in white precincts. I have those figures; I remember that.

Q I'm talking now about the black precincts.

A In the black precincts only he won; he beat Boyle.

Q What about in Mr. Stehr's race with Mr. Coats?

A In the primary I'm sure Stehr got more votes than he did.

Q Are there any Mexican-Americans on your Board of Directors?

A No. Actually in Dallas as far as we can tell there's only enough concentrations of Mexican-Americans in one precinct to be dominant; that's 415. Precinct

417 has a large quantity but not enough to dominate. There are scattered Mexican-Americans over town but we can't even identify the quantity; it's a little. And from the United States census information that I have the total number is almost insignificant on the voting population.

Q What would be insignificant to you in terms of figures, one, two per cent?

A I copied it out of the thing, out of the book yesterday. Here's what I got. In the total county out of a population of a 1,327,321, 220,512 are identified as Negro. Other total is 10,573. That must include Mexican-Americans. I don't know whether they are classified as other or not; I don't know how they are classified.

Q Would it surprise you to learn, Mr. Boch, that there's anywhere from eighty to a hundred thousand Mexican-Americans in Dallas County?

A I had no idea. But if there are that many they are sure not congregated in areas where they dominate the whole precinct. There's only one precinct that I know where it's dominant, predominantly Mexicans.

MR. COLLINS: I'll ask the court reporter to mark another copy, please, for

the record.

(Whereupon the instrument handed to the reporter was marked Regester Plaintiff's Exhibit 4, which is hereby attached and made a part of this deposition)

Q How, Mr. Boch, your organization supported Mr. Boyle and Mr. Coats, did it not, in their past races --

A Right, right.

Q -- against Mr. Brashear and Mr. Stehr?

A Right.

Q I hand you what has been marked in the record as Plaintiff's Exhibit 4, sir, and see if you can identify that and tell the Court whether or not you have ever seen such a document.

MR. LUNA: Do you have extra copies of these?

MR. COLLINS: I think I do. I don't have one of that one, Earl, but I'll get you one.

A I have seen all of this.

Q All right, I think Mr. Luna would like to see that as well. Do you remember when that exhibit, which is a three page exhibit marked as Plaintiff's Exhibit 4, went out?

A Just prior to the Democratic run off.

Q Did you mail that, Mr. Bush?

A I can't say that I mailed it. I had a hand in putting it together. I have personal knowledge of this.

Q Okay, that's what I wanted to find out.

A Personal knowledge and responsibility.

Q All right, sir.

MR. COLLINS: Off the record just a moment.

(Whereupon an off-the-record discussion was held, after which the following proceedings were had:)

MR. COLLINS: Mark that, please.

(Whereupon the instrument handed to the reporter was marked Register Plaintiff's Exhibit 5, which is hereby attached and made a part of this deposition)

Q I hand you what has been marked in the record as Plaintiff's Exhibit No. 5 and ask you, sir, if you can identify that and tell the Court whether or not you've ever have seen that particular document that was also purports to be mailed in the Bill Stokr --

A I can't -- I don't recall ever seeing this letter and I didn't have anything to do with it. The

enclosure I am familiar with.

Q The enclosure with Plaintiff's Exhibit No. 5 you are familiar with, is that correct?

A I'm familiar with the enclosure, not the letter.

Q The enclosure bears the letterhead, does it not, of the D.C.R.G.?

A Right.

Q Did you put that together yourself, Mr. Boch?

A I participated in it. I wasn't alone in it. Just like this thing here I participated in it.

Q But you do recognize both of these exhibits, Plaintiff's Exhibit No. 4 and the enclosure to Plaintiff's Exhibit No. 5 as having been put together and sent out by the D.C.R.G.?

A Well, no, not D.C.R.G. Well, we used the letterhead, I'll say that, we used the letterhead. This was not something which the organization was called in to put together but which the organization was presented with to the Precinct Chairmen and say, "Do you want to send this out?"

Q Well, the organization did use its letterhead at least?

A That's right.

Q And gave these materials to the local Pre-

cinct Chairmen, would that be a fair characterization?

A Yes. You can say that this is subject to their voluntary participation; that's what happened.

Q Then I assume with respect to Plaintiff's Exhibit No. 5 that some of the local Precinct Chairmen did mail this out then?

A Yes, they did.

Q You know Dan Webster, Jr. and Duffield Smith, Jr., do you not?

A I do not know Dan Webster, don't know if I ever met him. Duffield Smith, Jr. I don't believe I would recognize; I have met him.

Q You know him, he's a lawyer here in town.

A I might recognize him and I might not. Dan Webster I can't recall ever even meeting.

MR. LUNA: Let's go off the record just a second.

(Whereupon an off-the-record discussion was held, after which the following proceedings were had:)

Q Now, with respect to Plaintiff's Exhibits 4 and 5, Mr. Bosh, can you tell the Court the extent to which these documents were mailed out in Dallas County?

A I don't know the exact extent. They were mailed out, broadcast rather heavily.

Q All over the county, would that be fair to say that?

A I would think in the counties where -- except where -- where the Precinct Chairman would not do it. The first instinct and self-preservation is if you are going to be hurt by it don't mail it.

Q I assume you didn't have any of your black Precinct Chairmen mail Plaintiff's Exhibits 4 and 5?

A I wouldn't know for sure but I say our first instinct with those people is if you think your people will disagree use your own judgment. We are not asking you to do this; do it on your own volition.

Q Do you know of your own personal knowledge any black Precinct Chairmen associated with your organization that did mail Plaintiff's Exhibits 4 and 5?

A No, I don't.

Q Now, that race that Plaintiff's Exhibits 4 and 5 deal with, was a legislative race, was it not?

A Right.

Q And it was a county-wide race here in Dallas County, was it not?

A Right.

Q Now, Mr. Boch, I want to mark some other matters here so we can talk about them.

MR. COLLINS: Will you mark that,

please ma'am?

(Whereupon the instrument handed to the reporter was marked Reporter Plaintiff's Exhibit 6, which is hereby attached and made a part of this deposition)

Q Now, Mr. Bosh, I hand you what has been marked in the record there as Plaintiff's Exhibit No. 6 and ask you to look at that for a moment while I go down and get the attachment to that. Just a moment.

MR. COLLINS: Would you mark this, please?

(Whereupon the instrument handed to the reporter was marked Reporter Plaintiff's Exhibit 7, which is hereby attached and made a part of this deposition)

A I can't identify this letter here.

Q Now, Mr. Bosh, do you recall having seen this letter that apparently bears the signature of Mr. Joe Rich?

A I don't think I saw it or participated in its composition; I'm sure I did not.

Q Of course, it wouldn't surprise you to learn that that was mailed out, would it, Mr. Bosh?

A No, it bears Joe Rich's signature so it's been mailed.

Q You recognize his signature, do you not?

A This is his style, this signature; I'd say it is his.

Q All right. I hand you what has been marked in the record as Plaintiff's Exhibit 7, sir, and ask you if you have ever seen a document that's similar to that or if you have ever seen a document that looks like that?

A Joe Rich had a lot of these printed and we have since discontinued it. This is what I'm talking about, that permit, I don't think we have that anymore.

Q All right. Now, that was mailed out along with the letter, was it not, marked Plaintiff's Exhibit 6?

A I wouldn't know.

Q Well, Plaintiff's Exhibit 6 refers to an enclosed envelope and you wouldn't be surprised to find Plaintiff's Exhibit 7 going out with 6, would you, sir?

A No, no, no.

Q Now, that letter is dated March of 1970, is it not?

A The letter is dated March 19th, 1970.

Q Yes, okay.

MR. COLLINS: I need to mark another item.

(Thereupon the instrument handed to the reporter was marked Deposition Plaintiff's Exhibit 8, which is hereby attached and made a part of this deposition)

Q Mr. Koch, I hand you what has been marked in the record as Plaintiff's Exhibit 8, sir, and I ask you to look at that and see if you can identify that for the Court.

A This was a bulletin which several people participated and there was some controversy developed over it.

Q All right, now, this is --

A That was before we tightened up the control on what went out.

Q This was a membership bulletin, is that how you describe this Plaintiff's Exhibit 8?

A It was just a bulletin. I wouldn't call it a membership bulletin.

Q Well, under the letterhead there it says "Communication with Membership," doesn't it?

A Yes. Whoever wrote it used that wording, yes.

Q Do you know who wrote this document marked Plaintiff's Exhibit No. 8?

A No, I don't. I think Joe Rich may have par-

ticipated in this quite a bit. But I don't know how -- let's see, the last page, the back side, I started to say I might have had something to do with the last half of the back page but I can't recall specifically. The top half and the rest of it I didn't run and I don't know who wrote it.

Q You do know it went out over the D.C.R.G. letterhead?

A Well, it obviously did, uh-huh.

Q Look on the first page there if you will, please, sir, in the first sentence it says, "The life blood of any political organization is communication with the membership. And communications cost money. In the case of D.C.R.G. the cost is over $1,000 per mailing." Now, does that meet with your best recollection as to what the costs of the mailing were to your membership and friends?

A We have never spent that kind of money on any one mailing. I know to tell you that. Now, this fellow was hoping maybe to send out seven, eight or ten thousand letters but I don't think we have ever spent that kind of money. Since I have been Chairman I have personally restricted at the most five or six -- well, three hundred Precinct Chairmen, two fifty. Maybe seven hundred or eight hundred people but never in

the thousands. I just haven't felt we had that kind of money to spend. Now, whoever wrote this must have had something in mind.

Q Do you think you just kind of --

A I could tell you this: There's never been many letters sent out at this expense. Not just a letter, a bulletin.

Q Do you think the author of that paragraph was trying to drum up the membership, get a little money out of them; could that have been the purpose, putting that in there?

A He was probably trying to organize a money raising drive but it never has succeeded. This ten by ten deal has never worked. A little initial start was made, they might have raised three or four or $500.00. This is a voluntary effort and people just don't have time, they lose interest unless they are constantly goated and it never has been pushed. This was one person's idea on how to raise money and he copied after the Mormon church. We just haven't used it here.

MR. COLLINS: I'm going to ask the court reporter to mark another document, please.

(Thereupon the instrument

handed to the reporter was marked Kegester Plaintiff's Exhibit 9, which is hereby attached and made a part of this deposition)

Q Mr. Koch, directing your attention there to Plaintiff's Exhibit No. 9, can you examine that and identify it for the Court, please?

A Well, it's another one of these bulletins apparently.

Q Do you know approximately when that was sent out? I don't believe it has a date on it at the time.

A No, I don't.

Q Did you have anything to do with drafting that particular document?

A Well, this one paragraph here is mine.

Q Which one is that?

A The one headed "A Demagogue is a politican who takes advantage of social unrest for politican gain."

Q Any of the rest of it there yours?

A No. A number of us submitted material for it and it came out this way but this is all that I wrote.

Q Now, to whom did you submit the material?

A Well, I think what happened was that Joe Rich

just took it and put it together, personally.

Q Did that go out to the membership or do you know to the extent to which it was circulated?

A I don't know to how many people he mailed it out. I say Joe is not on the Board and itmybe this is one of the reasons. There wasn't enough communication between him and the rest of us.

MR. COLLINS: I'd like to mark another document, please.

(Whereupon the instrument handed to the reporter was marked Register Plaintiff's Exhibit 10, which is hereby attached and made a part of this deposition)

A This is another one he sent out.

Q Plaintiff's Exhibit No. 10, can you identify that, please, for the Court and jury.

A That's on this D.C.R.C. letterhead and signed by Joe Rich.

Q Do you remember seeing that go out?

A I may have seen a copy of it after it went out. I doubt if I saw it beforehand.

Q Now, that's soliciting funds, is it not, for now Senator Bentsen, Congressman Cabell and Mr. Wright I believe?

A Uh-huh.

Q How, it asks the business community here I believe to send some stamps or check payable to D.C.R.G., is that correct?

A That's what it says.

Q Do you know whether or not there was any response to that?

A Well, it was very little; that's the reason we discontinued this type of self-addressed envelope. People just don't do that and contribute that way.

Q In other words, a self-addressed envelope went with Plaintiff's Exhibit 10?

A I'm sure it did, although I don't know.

Q Similar to what has been in the record here as Plaintiff's Exhibit 7, is that correct?

A Uh-huh. We found that people will send money to candidates; they wouldn't send it to us. We got very little money that way.

Q But that did go out over the D.C.R.G. letterhead, did it not, sir?

A Yes.

MR. COLLINS: I'd like to mark these two documents, please.

(Whereupon the instruments handed to the reporter were marked Register Plaintiff's Exhibits 11 and 12, which are hereby attached and made a

part of this deposition)

Q I hand you what has been marked as Plaintiff's 11 and 12 and ask you to look at those and identify them if you can, please, sir.

A Well, Plaintiff's Exhibit No. 11, my name is on it, and I didn't authorize the man to use it. And I have never met Mr. Charles Isbell. He must have got a hold of a letterhead and used it. I don't know what his business is or anything else so I would definitely say this, that this man was not even personally very active in our organization.

Q But he somehow got a hold of your letterhead here though, did he not?

A He got a hold of it. I don't know -- This is totally unfamiliar to me and it did not come from any central source in the D.C.R.C.

Q What about Plaintiff's Exhibit 12?

A Evidently somebody got to these people and wrote a letter for them because this pattern is exactly like that one, and this man got a hold of a letterhead somewhere and used it. And my name is on it again and misEarl Luna's and I doubt if either us or Jim Tesling or the rest of us ever heard of him. Somebody was guiding these people and it wasn't us.

Q So you don't have any personal knowledge of

those?

A I'll disclaim both of those as being anything that even came out of the consensus. We always get some kind of consensus before we act and I don't know where these people -- who these people are listening to. I don't necessarily agree or disagree with what they wrote but we are not responsible for the letters.

Q Okay, that's Plaintiff's 11 and 12 --

MR. COLLINS: Is that correct, Mr. Luna?

MR. LUNA: Yes.

A It's not the first time we have been imitated or used. I doubt if Karl Luna saw the letter. Somebody was coaching them.

MR. COLLINS: I'd like to have some records marked, if you will mark these three as separate exhibits.

(Whereupon the instruments handed to the reporter were marked Regester Plaintiff's Exhibits 13, 14 and 15, which are hereby attached and made a part of this deposition)

(Whereupon an off-the-record discussion was held, after which the following proceedings were had:)

Q Mr. Boch, I hand you what has been marked in this record as Plaintiff's Exhibits 13, 14 and 15 which

are what purport to be mailings with the envelope attached to the letters that purport to come in the envelopes. I'll ask you if you will examine those three exhibits and see if you can identify those, please, sir.

A Well, for one thing an envelope addressed to Oscar Mauzy wouldn't have come from the organization. The letter may have.

Q You don't think Mr. Mauzy may have been on your mailing list simply in error?

A This was typed in error and somebody typed the envelope and got a hold of the envelope.

Q I think that appears to be, looks like one of those Addressograph --

A Looks like a typewriter to me.

Q Well, maybe my eyesight is a little better.

A Could be. Somebody else has some of our envelopes and addressed another one to him and he was not on -- I doubt if he -- This is the 22nd of May, 1968?

Q Yes, sir.

A The office was still over at Joe Rich's office and I just don't believe they would have done it.

Q Do you remember seeing any of these documents being mailed that is marked as Plaintiff's Ex-

hibits 13, 14 and 15?

A I don't remember seeing them either written or mailed. I wouldn't be surprised if they were sent out but --.

Q You are not denying that they were sent out, are you, Mr. Boch?

A No, I have no knowledge one way or the other.

Q And they do purport to be in an envelope that apparently carries the D.C.R.G.'s letterhead or return address?

A Right.

Q Or something of that nature, is that correct?

A I would just simply say this, that somebody has gotten hold of some D.C.R.G. envelopes and addressed them to Oscar Maury. I doubt if the letters were originally addressed to him.

Q These contain, these Exhibits 13, 14 and 15 contain enclosures, do they not?

A I don't doubt that they originated with the D.C.R.G. personnel somewhere. The organization as such I wouldn't say but the personnel put them out. I would say this is an organization that depends upon them and really involves their effort and like Generals in the Army we think we are back far enough we don't tell the Corporals and Sergeants what to do.

MR. COLLINS: Let me have another marked, please.

(Whereupon the instrument handed to the reporter was marked Regester Plaintiff's Exhibit 16, which is hereby attached and made a part of this deposition)

Q Mr. Booh, directing your attention now to Plaintiff's Exhibit 16, I ask you to look at that exhibit and its enclosures and identify that for the Court if you can.

A Well, these are letters where Precinct Chairmen got together and wrote a letter on behalf of another one of their members. Enclosed in it is a letter from the Precinct Chairman candidate himself and a slate card.

Q Now, the slate card bears what name in terms of an organization putting out --

A Dallas County Committee For Responsible Government.

Q Is that your organization?

A That's it. Wait a minute, Dallas County Committee? No, no, no. No, ours is Democratic Committee For Responsible Government. This is not our organization.

Q Do you recall having seen that?

A Yes, I have seen similar ones like this.

Q But you deny that that is your organization that put that out?

A That's correct, this is not the D.C.R.G. because a lot of money went into this that is not ours.

Q Went into what?

A Into the cost of printing of this card and distributing it all over town. This is not a sole D.C.R.G. effort. We didn't control the thing.

Q But that does appear to be your slate though, doesn't it?

A It is our slate. This was adopted by the group that put this together. Our slate was adopted by this group.

Q It's one and the same as the slate card enclosed in Plaintiff's 16, is that correct?

A Yes. We encouraged these people to run for office before the filing date. This is just before the primary. These are the same people that we openly announced we were encouraging to run and file for the office.

Q Directing your attention to the last letter there that's apparently enclosed with it to the Kiest Park Area people in Precinct --

A 446.

Q -- 446 supporting one Morris Holt. Did your organization support him or do you recall?

A Well, yes, we sponsored him and these are the Precinct Chairmen in the area or in the vicinity in which he lives, adjacent precincts.

Q They are all members of your organization, are they not?

A All Precinct Chairmen in that particular -- in these particular precincts.

Q And they are also associated with and friends of the Democratic Committee For Responsible Government?

A It says, "We, the undersigned Precinct Chairmen," of the precincts. They identify themselves and they are all Precinct Chairmen whom we sponsored and whom we associate ourselves with.

Q When you say we you mean the D.C.R.G.?

A D.C.R.G., right. And this is the candidate himself.

Q The last letter being from Mr. Holt?

A Mr. Holt, a candidate for Precinct Chairman.

MR. COLLINS: Mark this, please.

(Whereupon the instrument handed to the reporter was marked Regester Plaintiff's Exhibit 17, which is hereby attached and made a part of

this deposition)

Q Let's see, calling your attention to Plaintiff's Exhibit 17, Mr. Boch, I ask you to examine that and see whether or not you received that letter or have ever seen that letter before.

A I have never seen it.

Q Just take a moment to look at it if you will, please, sir, so that you will be certain.

MR. LUNA: Who signed it?

THE WITNESS: Who is Robert M. Hill?

Q Have you ever see Plaintiff's Exhibit No. 17, Mr. Boch?

A No.

Q Of course it's addressed to the D.C.R.G., is it not, the letter?

A Yes, it is.

Q And it's addressed to the Cedar Springs address which is Mr. Rich's business?

A Right.

Q Apparently Mr. Rich, or whoever received it, did not see fit to turn that over to you, is that your testimony?

A I have never seen it. I don't know why he didn't -- or whether he received it or what he saw fit. I have just

never seen the letter and never heard of it.

Q Okay. At any rate, would it be fair to say that as late as April of 1970 the D.C.R.C. was still using the Cedar Springs address?

A Well, April of 1970?

Q Yes, sir.

A April 1970. When was the election?

Q May of 1970 I think.

A Well, obviously some letters came to that address. I wouldn't say we actually physically had an office there. It was just before the election so we must have had some place where we could get together. That probably was it.

MR. COLLINS: Mark these please.

(Whereupon the instruments handed to the reporter were marked Regester Plaintiff's Exhibits 18 and 19, copies of which are hereby attached and made a part of this deposition)

Q Directing your attention now to Plaintiff's Exhibits 18 and 19, Mr. Bosh, I ask you to look at those and see if you can identify them.

A Yes. This was a composite letter agreed upon.

Q You are talking now about what exhibit?

A This Exhibit 18.

Q All right, and it bears your signature, does it not?

A My signature is on it. It doesn't seem to have anything to do with D.C.R.G.

Q Do you know whether D.C.R.G. sent that out or not?

A It did not; it did not finance this or send it out I don't think.

Q Who did finance it and send it out?

A I'm trying to think. I don't know, this is part of a campaign for Bentsen that went on here. Who financed it and who mailed it and how it was handled I don't know. A meeting was called of a bunch of citizens on behalf of Bentsen and this letter was argued over and beat over and finally this was all that they could agree on, this is what they agreed on, and we all signed it, some of us that were there and what happened thereafter I don't know. But this is not a D.C.R.G. effort. This is strictly citizens efforts.

Q What about Plaintiff's 19, have you ever seen that before?

A I may have seen it. I did not participate in the meeting and --

Q Well, at any rate Plaintiff's 19 apparently was sent out by Mr. Thetford, is that right?

A Yes.

Q And he is one of your D.C.R.C. Precinct Chairmen?

A At that time he was. Let's see, what date is this?

Q It doesn't say.

A Let's see, that must have been then before the 1970 election.

Q I think so.

A Whether he was -- no, he may have moved. I doubt if he was. Although in the prior election -- No, in 1970 he was a district coordinator, wasn't he. 1970 seems like too recent. He had been one of our Precinct Chairmen and had been the eighth district coordinator. My memory is not too good on that one.

MR. COLLINS: Mark that, please.

(Whereupon the instrument handed to the reporter was marked Regester Plaintiff's Exhibit 20, which is hereby attached and made a part of this deposition)

Q Mr. Boch, on election day you have gone around and been a poll watcher and that sort of thing, have you not?

A I have never been a poll watcher. I'm an officer of the Democratic Party and we did -- I was

called at the office to get in on any complaints about election or advise and so forth and so on. I have visited some of the polls to see what was going on.

Q I hand you what has been marked as Plaintiff's Exhibit 20 and ask you if you remember that particular story that came out in the Times Herald here in Dallas.

A I recall it.

Q You do remember seeing that?

A Uh-huh.

Q Is that last paragraph down there about you and Mr. Orr and Mr. DeBusk reading "the riot act" to certain people, is that accurate or inaccurate?

A It's not accurate. Do you want me to tell you the facts?

Q No, I just want to know how you characterize it.

A It's not accurate.

Q Okay, that's all I'm interested in.

A I'll be glad to tell you the facts.

MR. LUNA: Just answer the question. That's one of the advantages we lawyers have, George; we have the right to ask the questions we would like and get the answers, not the answers we want but the an-

80

swer to that question.

A We were particularly mindful of the fact that we didn't want --

MR. LUNA: Wait until he asks you another question.

Q I assume you yourself, Mr. Boch, personally are opposed to the concept of the single-member legislative district?

A Yes, that's a rather deep conviction with me.

Q Okay. Now, Mr. Boch, looking at all of these exhibits that have been marked and introduced here, would it be fair to say that D.C.R.C. is a fairly active organization, at least in terms of correspondence and campaign literature?

A Well, it's a rather virulent participation by citizens in the affairs of thdrgovernment.

Q And participating as --

A A lot of the activity credited to the name is by the individuals who because of their knowledge participate individually.

Q But would it be fair to say that the D.C.R.C. does assist these people in terms of having campaign literature and envelopes and stamps and so forth?

A It assists in advising its Precinct Chairmen

principally. It can't do much for legislative candidates or for a national candidate or state-wide candidates.

Q On an informal sort of level how would you describe the major decisions that are made by the D.C.R.G. in terms of the people that are responsible for making the major decisions?

A You mean how are they made?

Q Yes, sir.

A We have been very careful not to exert leadership or to influence. We have been real careful because what we do represents a collective thinking of the Precinct Chairmen and the people in their precinct and we take all the soundings we can. And since I have been Temporary Chairman there has never been a meeting of just the Board. I always invite ten or fifteen others and tell them to bring one or two others if they want to.

Q Apparently Mr. Rich sends out quite a bit of correspondence.

A Mr. Rich has not been active since -- following the last primary, the primary before the -- Was it the last primary?

Q Primary of the summer of 1970?

A Right. He's not on the Board and has not

been active. I have been very careful not to repeat some mistakes that have been made as far as relation is concerned by other people prior to -- at the time they named me as Chairman. My main purpose is to maintain harmony among our own people, get the consensus, get the crowds.

MR. COLLINS: Pass the witness.

CROSS EXAMINATION

BY MR. LUNA:

Q Mr. Boch, in participating in politics -- First, let me precede that by saying that you are aware that your deposition is being taken in the case where the multi-member legislative district concept is being challenged in the Court on the basis of discrimination against certain minorities and political parties, are you aware of that?

A I'm aware of that.

Q Mr. Boch, have you ever been a party in any way to attempt to discriminate against minorities?

A I have been very careful not to be.

Q All right. What would be one of the best reasons that you could give me that you are not interested in trying to discriminate against minorities?

A I think that rule in this country by one element is very detrimental to minorities, and I happen

to be a member of one. That's the reason my parents left the old country.

Q What minority group are you a member of?

A I'm Jewish. They lived in a country that used to be Lithuania, it's been everything in the world but overrun, but basically it's Lithuania on the Baltic Sea. It's part of Russia now.

Q There's been some talk here of whether or not you have worked in the organization with blacks. Let me ask you this: How about in your own business, do you employ people of different colors and different backgrounds?

A Yes, I do.

Q Races, religions?

A Yes, I do.

Q In your personal office do you have a black secretary?

A We sure do, the best payroll clerk I have ever had.

Q How long has she been with you?

A Oh, two or three years.

Q Do you know of anybody in Dallas County, a member of any minority or any other group, Mr. Boch, who has been denied the right to participate in the elective process of Dallas County?

A No, I don't.

Q Has everybody been not only not hindered but encouraged to register to vote?

A When we first started out --

Q Answer that question first.

A The answer is everybody has been encouraged.

Q You mentioned blacks on the Board and I'm not sure -- on the D.C.R.G. Board. I believe you mentioned L. H. or L. F. Brown.

A L. H. Brown.

Q Is he black?

A He's black.

Q And Mr. Dodson I believe was another one?

A Right.

Q Now, there's been a good bit of talk here about D.C.R.G. candidates, Mr. Boch. Is it just the D.C.R.G. that endorses candidates or do a lot of other organizations also endorse the same candidates?

A Oh, they have a lot of organizations that endorse candidates.

Q So when we are talking about candidates that D.C.R.G. endorses we are not talking about candidates that just D.C.R.G. endorses, right?

A Oh, no, we are realist and we invite everybody to endorse them and they do. A lot of people

endorse them.

Q On the question of interviewing candidates, do you know of any time that the D.C.R.G. has ever tried to tell anybody how they ought to vote?

A No, that's one of our principles. State the facts and the rest for the judgment.

Q Are you familiar with the Dallas County Democratic Men's Club?

A I have heard of it.

Q Do you know that from time to time they also endorse candidates for office?

A Yes, they do.

Q How about the Democratic Women's Club?

A The same thing.

Q How about the Democratic Club of Garland?

A They also endorse candidates.

Q There's a Democratic men and women's club in Garland, is there not?

A They endorse candidates.

Q How about in some of the other suburban areas, don't we have other Democratic clubs?

A We have them by the dozen, Southeast Dallas Democratic Club, South Oak Cliff Democratic Club.

Q Southwest Dallas Democratic Club, are you familiar with it?

A Smithsonian Democrats, East Dallas Democratic Club. I think we counted at one time twenty-two such organizations.

Q So the Democratic Committee For Responsible Government is just one of many Democratic organizations that endorses candidates in sometimes primary and sometimes general elections?

A That's correct.

Q But other than Precinct Chairmen I believe you have told us that the first endorsement in any other race as far as you are aware by the D.C.R.G. was in the 1970 primary and general election, is that right?

A That is correct.

Q But are there many other Democratic clubs that have endorsed candidates in both primaries and general elections for a longer period of time than that?

A Oh, yes, all of these other clubs were in existence before we ever became an organization. They were all in existence before we ever thought of being organized.

Q So when for instance you identified one of these exhibits sending out endorsing candidates that had Rev. Zan Holmes name on it, you are not telling the

Court that he was a candidate that was supported only by the D.C.R.G., are you?

A No, we solicited that; we would be glad to see everybody endorse our people.

Q And the candidates solicit everybody's endorsements?

A Right, they didn't limit themselves to our endorsement.

MR. LUNA: I believe that's all.

REDIRECT EXAMINATION

BY MR. COLLINS:

Q Mr. Boch, what does it cost to run in a legislative race here in Dallas County?

A Well, that was one of my surprises, the money that I saw come through. Various candidates have told me they spend anywhere from $2,000.00 up. Or one even told me he ran a race for less than that. I know that collectively, and this is not D.C.R.G. money but money that just a group of us raised last time, that we spent centrally and which we feel is the most effective money, we didn't buy a billboard, we didn't have enough money, and we didn't buy a radio spot, we didn't have enough money. We scraped together enough for the slate cards and some distribution over them and I think two three-quarter page ads or full page ads in

the paper.

MR. LUNA: Just tell him how much it cost to run a race, if you know.

A The money that we handled averaged probably less than $1500.00 per representative. I don't think we had any more money than that to spend, I doubt if we did.

Q Do you remember purchasing a printing for some $4,000.00?

A Could I see the bill for what it's for?

Q I'm just asking questions, sir.

A Now, let me tell you this: Different people would raise a few hundred dollars or a thousand, they would go take it and say, "Okay, now we've got the money, go get this done."

Q My question to you, Mr. Boch --

A I don't remember.

Q -- is do you remember paying a bill for that amount of money?

A I don't ever remember paying a bill for that kind of money, political bill. Not me personally.

Q How about in your capacity with the D.C.R.G.?

A I don't ever remember it. There may have been one but I don't remember it.

Q What about one for $1,298.40 in April of 1970,

do you remember that one?

A I don't recall. I would have to see the invoice but I don't recall any specific number. I know the total is not much.

Q Does that figure ring a bell with you in any way?

A No. Lord, I'm in the contracting business and I write -- I sign checks every day for a lot more money than that. I wouldn't remember those kind of amounts, whether it be a dollar or fifty thousand.

Q Well, you know Mr. Zimmermann, do you not, who is with Addressors Unlimited?

A I know him.

Q And you have done business with him before, haven't you?

A We have done business with him.

Q And got him to do mailings for you, haven't you?

A We have contracted with him to do addressing and -- I don't think he handles mailings. I think he just handles addressing.

Q He's done some of your work though, isn't that a fair statement?

A Yes. Now, let me point this out to clarify this. Sometimes we'll get twenty Precinct Chairmen

who will say, "We want a machine addressed mail and we'll pay for it" so we'll buy the whole package and then the man will give us the money and we'll deliver it. We act like a central collecting and disbursing agency. Not necessarily money we raise directly. In other words, they place the orders with us, the Precinct Chairmen will and they'll say, "We don't want to hand address the envelopes; we'll go ahead and pay for it." And so what we will do, we have to deliver the money to Mr. Zimmermann in advance I think and what we will do, we'll collect the money and take it over there and write him a check or we'll deposit it and write him a check. I can't say that we actually raise the money for that.

MR. COLLINS: I pass the witness.

CROSS EXAMINATION

BY MR. WHITE:

Q Mr. Boch, you have answered the questions that have been presented to you here responsively and truthfully to the best of your knowledge, is that correct?

A Oh, yes.

Q If I had asked the questions that have been asked of you this afternoon would you have responded in substantially in the same manner?

A Oh, yes.

MR. WHITE: That's all I have.

(Signature waived by agreement of all parties present)

OF THE
DEMOCRATIC COMMITTEE FOR RESPONSIBLE GOVERNMENT

December, 1970

I. NAME: The name of this organization shall be DEMOCRATIC COMMITTEE FOR RESPONSIBLE GOVERNMENT.

II. PURPOSE: The purpose of the organization shall be to encourage outstanding individuals, who reflect the viewpoint of the responsible majority of Dallas citizens, to seek party and public office in Dallas County and Texas, and to support their election.

III. MEMBERSHIP: A person may become a member of this organization upon making written application to the Board of Directors and being approved by the Board, provided such person shall be:

A. Active Member:
1. A Precinct Chairman
2. A Candidate for Precinct Chairman in the last primary election, and such person shall be eligible to remain a member until the next primary election.
3. Persons that contribute or raise $25.00 or more per year.
4. Persons active as District, Area or Sub-Area Co-Ordinators, or who render special services of substantial nature.

B. Supporting Member:
Persons that do not apply for active membership, but who meet the qualifications of item 3 above.

C. Associate Member:
Upon application, anyone that makes a donation of $1.00 or more.

Only Active Members shall be entitled to vote at any Membership Meeting.

IV. BOARD OF DIRECTORS:

A. The Board of Directors shall consist of twenty-eight (28) members. Three (3) shall be the District Co-Ordinators. Five (5) shall be elected from each of the Senatorial Districts lying wholly within Dallas County. Ten (10) shall be elected at-large. Members shall serve two years.

1. The Members from the above Senatorial Districts shall be elected by a majority vote of the membership attending the biennial meeting.
2. The at-large members shall be elected as soon as practicable after the biennial meeting by the members representing the Senatorial Districts.
3. A vote of a majority of the Members of the D.C.R.G. present at any duly called membership meeting may remove any or all members of the Board.

B. Nominations to Board of Members Representing Senatorial Districts: Prior to the Biennial Meeting, each District Co-Ordinator shall call a meeting of the D.C.R.G. Precinct Chairmen of his District for the purpose of nominating five (5) candidates living in that District for membership on the Board and for selecting the person to make such nominations at the Biennial Membership Meeting. Additional nominations for candidates from that District may be made from the floor by any member present. If the District Co-Ordinator fails to call such a meeting before 5 days prior to the Biennial Meeting, then such a meeting may be called by any three (3) D.C.R.G. Precinct Chairmen living in that District.

C. Officers: The Board shall elect a Chairman, Vice-Chairman, Secretary and Treasurer to serve annual terms until and unless replaced by a majority vote of the Board.

D. District Co-Ordinators: District Co-Ordinators shall be appointed by the Board. The Co-Ordinators of the previous year shall continue to serve in that capacity until their replacements are appointed.

E. Minutes: The Chairman shall have minutes taken of each Board and Membership Meeting and shall have copies of same distributed to all Board Members as soon as practicable after such meeting.

F. Vacancies on Board: Vacancies on the Board shall be filled by the Board, subject to same District representation as above described. In the event an appointed District Co-Ordinator has been previously elected to the Board at the Biennial Meeting, an additional member from his District shall be elected by the Board.

G. Quorum of the Board: A Quorum of the Board shall consist of two-thirds of the Board as constituted at the time of the Board Meeting. All actions of the Board shall be by majority vote of those present.

V. MEETINGS: The Biennial Membership Meeting shall be held on the First Thursday in December following the General Election in November. Special Meetings of the Membership or Board of Directors may be called by a majority of the Board of Directors. The time and place of the Biennial Meetings of the membership shall be decided by the Board of Directors and written notice of such meetings shall be sent to the membership at least three (3) days prior thereto. The Board of Directors shall meet at least once every two (2) years immediately following a Biennial Membership Meeting. Special meetings of the Membership may be called by any 25 members giving notice as above described. Written notice of the time and place of the Biennial and special meetings of the Board of Directors shall be sent to the Directors at least three (3) days prior thereto. A quorum at any Biennial or Special Meeting of the Membership shall be those present, but not less than 25.

VI. INDEBTEDNESS: No Member of this organization shall ever incur any indebtedness on behalf of any other member.

VII. AMENDMENTS: The Constitution and By Laws may be amended at any Biennial or Special Meeting by a majority vote of those present.

VII. ENDORSEMENT OF CANDIDATES: Before any Election in which the Organization desires to participate, the Board of Directors shall act as a Committee to examine all Candidates seeking endorsement by the Organization. No endorsement of candidates shall be made unless a majority of the full Board of Directors have authorized such endorsement at a special meeting called for such purpose.

DEMOCRATIC COMMITTEE FOR RESPONSIBLE GOVERNMENT
BOARD OF DIRECTORS
1970 - 72

PLAINTIFF'S EXHIBIT 2

8th District

L. R. "Bob" Gibson, Jr.	10212 Doris Drive Dallas, 75229	B: 321-6431 351-9751
Bill Dowdy	800 Fidelity Union Tower Dallas, 75201	B: 748-8181 H: 357-3566
John T. Mitchell	1410 W. Shady Grove Irving, 75060	B: 253-7167
Mrs. Virginia Moore	4207 Southcrest Rd. Dallas, 75229	H: 352-0582
Mrs. Betty McDonald	3220 Latham Dallas, 75229	H: 352-7191
Al Hegler	2900 McFarlin Dallas, 75205	B: 526-8951 H: 363-1145

16th District

Jack Henson	P.O. Box 11134 Dallas, 75223	B: 328-7271 H: 321-6892
[redacted]	[redacted]	[redacted]
Rev. L. H. Brown	5341 Bourquin Street Dallas, 75210	B: H: 421-2809
Paul Underkofler, Jr.	211 N. Ervay Bldg. Suite 416 Dallas, 75201	B: 748-8474 H: 528-5896
Johnnie James	6815 Highspire Dallas, 75217	B: 741-3531 H: 391-6138
B. L. Nelson	P.O. Box 25008 Dallas, 75225	B: 528-3126 H: 941-6817

23rd District

Lonnie Wilson	1513 Bryan Street Dallas, 75201	B: 742-7134 H: 946-7500
[redacted]	[redacted]	[redacted]
Allan Melton	1512 Commerce, Suite 1305 Dallas, 75201	B: 742-8668 H: 941-4506
E. Carlyle Smith, Jr.	938 Burleson Street Grand Prairie, 75050	B: 262-1505 H: 262-7658

23rd District cont.

Robert L. Reid	5919 Kreneland Dallas, 75211	B: 363-6326 H: 337-1035
Clifford Yeldell	504 Bob-White De Soto, 75115	B: 331-8077 H: 223-6712

Members at Large

✓ William H. Clark, III	2424 First Nat'l Bank Bldg. Dallas, 75202	B: 741-1002 H: 526-7542
George Bock	P.O. Box 15725 Dallas, 75215	B: 421-7387 H: 824-8587
✓ Robert W. Smith	4000 First Nat'l Bank Bldg. Dallas, 75202	B: 748-7051 H: 348-4484
✓ Manuel De Busk	4201 First Nat'l Bank Bldg. Dallas, 75202	B: 741-4177 H: 239-2211
S. J. Hay, Sr.	2800 South, Suite 235 Dallas, 75201	B: 747-6675
Ernest E. Wright, Jr.	2727 Cedar Springs Dallas, 75201	B: 748-0205 H: 278-4624
Lee Halford	12th Floor, Tower East 2700 Stemmons Freeway Dallas, 75207	B: 631-7910 H: 235-3302
Dick Stroman ✓	P.O. Box 17002 Dallas, 75217	B: 391-2159 H: 35-4922
Jack Thompson	2608 Inwood Rd. Dallas, 75235	B: 630-8891 #521 H: 352-8213
Rev. H. F. Dodson	3916 Kynard Avenue Dallas, 75215	B: H: 421-7996

DEMOCRATIC CO. MITTEE ~ RESPON IBLE GOVERNMENT

December 23, 1969

Ben Atwell
Jack Blanton
Bill Brecklein
Sam Coats
Joe Colman
Joe Dixon
Zan W. Holmes, Jr.
W. S. (Bernie) Lankenau

Guy Lewis
Bob Lynch
Griffith Moore
Dick McKissack
Fred Orr
Chris Semos
James W. Stroud

Dear Mr.

The D. C. R. G. is a precinct organization of Dallas County citizens interested in promoting good government through responsible and effective representation. Our membership is currently several thousand and growing. Over 200 of the 233 Democratic Party Precinct Chairman are among our members and constitute a broad base for precinct work.

With a view to best possible representation in State Government, we have conducted a study of potential candidates for the Legislature in the 1970 Democratic Primary. Your name is among those most favorably received. We offer every encouragement to you in the event you find it possible to serve our community in this worthwhile capacity. The D. C. R. G. will, should you file as a candidate in the Democratic Primary, exert extraordinary effort in the Precincts to insure your nomination in May and your election in November.

Thank you for your interest in serving Dallas County.

Yours very truly,

The Board of Directors

Bill Brewer
L. H. Brown
Joe Carpenter
Wm. H. Clark, III
Manuel De Busk
H. F. Dedeaux
Bill Dowdy
Glenn Dunn
Dr. Emerson Emory

L. R. "Bob" Gibson
Lee Halford
S. J. Hay, Sr.
Jack Hexson
Johnny James
Ennis Killingsworth
Roy Orr
Joe Rich
Charles Simons

Forrest Smith
Robert W. Smith
Dick Stromen
Conway Thetford
Jack Thompson
Paul Underkofler
George Wilhite
Lonnie Wilson
Ernest S. Wright, Jr.

3727 CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 748-0207

DEMOCRATIC COMMITTEE for RESPONSIBLE GOVERNMENT

A REMINDER TO VOTERS:

THE DEMOCRATIC PRIMARIES ARE NOT OVER. LET US NOT WAKE UP THE MORNING AFTER THE RUNOFF ON JUNE 6, 1970, AND FIND OUT THAT FAILURE TO VOTE HAS RESULTED IN THE ELECTION OF TWO LIBERALS TO OUR STATE LEGISLATURE. DALLAS COUNTY NEEDS TO MAINTAIN ITS REPUTATION AS THE BULWARK OF CONSERVATIVE STRENGTH.

VOTE FOR:

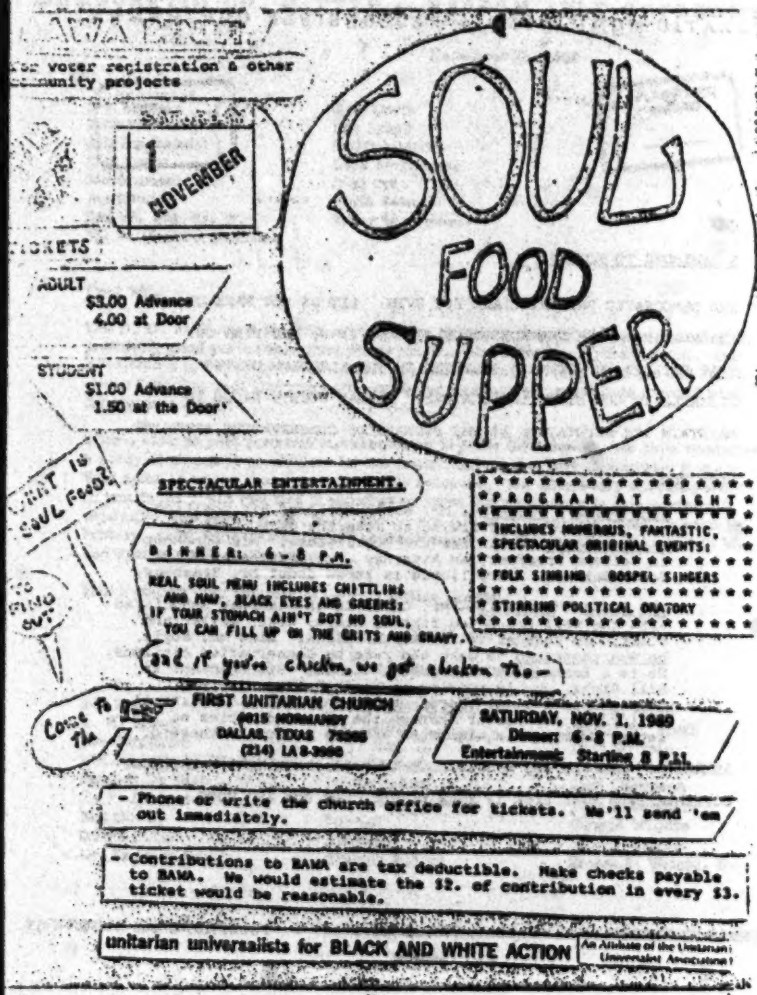
JOHN BOYLE - Place 1 - Mr. Boyle resigned his position as City Attorney of Irving to make the Race after he was requested to run for the Legislature. His opponent is Berland Brashear, an Attorney with Offices at 3318 South Oakland. Very little is known about Mr. Brashear.

SAM COATS - Place 12 - Mr. Coats is an Attorney associated with the well respected firm of Clark, West, Keller and Clark. He resides in far North Dallas. Like Mr. Boyle, he was requested to make the race by Conservative citizens. He is a former DCRG Precinct Chairman. His opponent is Bill Stehr, who is running in South Dallas with Mr. Brashear as a team. Words cannot describe his political philosophy any better than do the enclosed copies of letter bearing his signature and the enclosure thereto.

REMEMBER: RUNOFFS ARE A SPECIALTY OF MASS BLOCK VOTING TACTICS.

CONSERVATIVES WILL LOSE IF THEY DO NOT TURN OUT AND VOTE.

2727 CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 748-0307


BAMA BENEFIT
for voter registration & other community projects
1 NOVEMBER
TICKETS
ADULT
$3.00 Advance
4.00 at Door
STUDENT
$1.50 at the Door
SOUL FOOD SUPPER
WHAT IS SOUL FOOD?
SPECTACULAR ENTERTAINMENT.
DINNER: 6-8 P.M.
REAL SOUL MENU INCLUDES CHITTLINS AND MAW, BLACK EYES AND GREENS: IF YOUR STOMACH AIN'T GOT NO SOUL, YOU CAN FILL UP ON THE GRITS AND GRAVY.
and if you're chicken, we got chicken too—
PROGRAM AT EIGHT
INCLUDES NUMEROUS, FANTASTIC, SPECTACULAR ORIGINAL EVENTS!
FOLK SINGING GOSPEL SINGERS
STIRRING POLITICAL ORATORY
TO FIND OUT
Come To The
FIRST UNITARIAN CHURCH
8015 NORMANDY
DALLAS, TEXAS 75228
(214) LA 8-3660
SATURDAY, NOV. 1, 1969
Dinner: 6-8 P.M.
Entertainment: Starting 8 P.M.
- Phone or write the church office for tickets. We'll send 'em out immediately.
- Contributions to BAMA are tax deductible. Make checks payable to BAMA. We would estimate the $2. of contribution in every $3. ticket would be reasonable.
unitarian universalists for BLACK AND WHITE ACTION
An Affiliate of the Unitarian Universalist Association

1519

DO YOU WANT THIS MAN ELECTED?

October 20, 1969

Dear Friend:

We hope you'll be able to join us at this Unitarian Church Dinner. The proceeds will be used primarily for voter registration activities, mostly in predominantly Black or Latin-American neighborhoods.

Political and civic figures in the audience will be introduced, and any greetings from people not present will be read.

We're taking the liberty of sending you two (2) adult tickets (numbers) at $3.00 each. We hope you can come - or at least send us a contribution if you cannot. Please make your check out to BAWA, which is a tax-deductible affiliate of the Unitarian-Universalist Church. We'd appreciate your returning any tickets not paid for.

Thanks for your help in making more people participating members of our society.

Yours sincerely,

Bill Stahl

TICKET №

ADULT
$3.00 Advance
4.00 at Door

unitarian universalists for BLACK AND WHITE ACTION

BAWA BENEFIT
SOUL FOOD DINNER

SATURDAY, NOV. 1, 1969
Dinner: 6 - 8 P.M.
Entertainment: Starting 8 P.M.
FIRST UNITARIAN CHURCH
4015 NORMANDY
DALLAS, TEXAS 75205
(214) LA 8-3990

STUDENT
$1.00 Advance
1.50 at the Door

1520

Dear Neighbor:

Thank you for voting in the Democratic Primary on May 2, 1970. We appreciate your effort and time in voting for the candidate of your choice.

However, our work is not complete inasmuch as the Democratic Primary run off is Saturday, June 6, 1970.

I am enclosing herein litature which we believe clearly indicates the political philosophy of candidates Stehr and Breashear. A strong campaign is being run in the liberal areas of Dallas to get out the vote on Saturday, June 6th.

We and our neighbors must vote if we want our candidates, Coats and Boyle, to prevail.

PLEASE VOTE AND GET YOUR NEIGHBOR TO VOTE FOR:

SAM COATS
and
JOHN BOYLE

Sincerely yours,

Dan D. Webster Jr.
Former Democratic Precinct Chairman

Duffield Smith Jr
Democratic Precinct Chairman

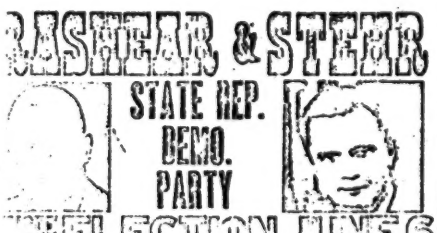
DEMOCRATIC COMMITTEE for RESPONSIBLE GOVERNMENT

2727 CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 748-0207

WHICH PAIR DO YOU WANT TO REPRESENT YOU IN AUSTIN

THIS

Below is a copy of a poster that is being displayed only in Block Voting Precincts in South Dallas. Obviously Ultra-Liberals Brashear and Stehr hope to ride in together on a massive Block Vote in those Precincts that Ralph Yarborough carried.



OR THIS

Below are pictures of the two candidates who are endorsed by the Dallas County Committee for Responsible Government, the Dallas Time Herald and the Dallas News.

PLACE 3 - JOHN BOYLE

PLACE 12 - SAM COATS

ELECTION DAY IS SATURDAY, JUNE 6 - IT IS IMPORTANT - TELL YOUR FRIENDS - CALL THEM ON SATURDAY.

ABSENTEE VOTING MAY 27 THRU JUNE 2 - AT HALL OF RECORDS

Board 161

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PAGE BOUND VERTICAL

1522

DEMOCRATIC COMMITTEE for RESPONSIBLE GOVERNMENT

March 19, 1976

A Democratic Primary race in Texas Senatorial District No. 23 between Oscar Mauzy and John Wright is generating interest beyond the District in Dallas County. Mauzy has given agressive leadership to big spenders in the Texas Senate - and your business is among those footing most of the bill. Four more years of his liberal tax and spend policies can be very expensive to all of us.

John Wright is our kind of folks. D.C.R.G. is dedicated to his election. With financial support, victory is within reasonable expectation. We need yours in this cause.

Checks should be made payable to " John Wright Campaign Fund" and sent to him at P.O. Box 781, Grand Prairie, Texas 75050 or to "D.C.R.G." and forwarded in the enclosed envelope. John will write to you with personal thanks.

Sincerely,

Joe Rich

jhgv
Encl.

2727 CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 748-0207

Business Reply Mail
No postage necessary if mailed in the US
Postage will be paid by addressee

FIRST CLASS
Permit No. 13999
DALLAS, TEXAS

The Democratic Committee for Responsible Government
2727 Cedar Springs
Dallas
Texas 75201

I Pledge to use my best efforts to work for good government in Dallas County and in the State of Texas.

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT

"Kickin' Up Interest in Precinct Elections"

2727 CEDAR SPRINGS, DALLAS, TEXAS 75201 PHONE 748-0207

September 1970

COMMUNICATION WITH MEMBERSHIP - FUNDING

The life blood of any political organization is communication with the membership. And communications cost money. In the case of D.C.R.G. the cost is over $1,000 per mailing. How do we do a better job?

Your Board of Directors think there are 1,000 interested conservatives in Dallas County who are willing to invest $10.00 twice each year to sustain a good active and informative program. Accordingly, they established a funding device termed the "D.C.R.G. X-Ten-10" - X Teams of ten divisions each which will solicit $10 from each of ten citizens. The initial organization is under direction of Joe Rich with team Captains as follows:

Bill Clark	741-1002	Bill Dowdy	748-8181
George Bock	421-7387	George Wilhite	747-8672
Jack Henson	328-7271	Roy Orr	223-6000
Bob Burns	748-4451	Johnny James	741-3531
Conway Thetford	421-7387	Bob Smith	748-7051

Equal in importance with funding is an involved membership. Call one of the above today and get yourself involved. Organization must be complete early in October. See inside fold for graphic illustration of how it works.

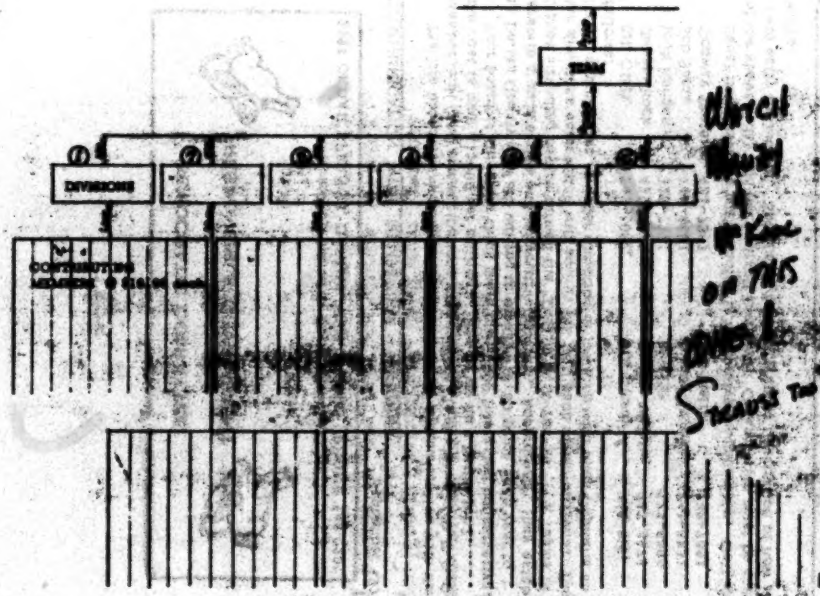
IN MEMORIUM

Many give of themselves in service to a Political Party. Few will ever reach such heights as E. E. Turquette, a Democratic Party Precinct Chairman for 38 years. Mr. Turquette died September 14, 1970.

We shall all miss him.

COPY

1526



TEAM
DCRC ITEM 10

Party Registration

Strauss Chided By Yarborough

1970 POLITICS - AN APPRAISAL

Effective politic activity can be measured both p tively and negatively -- what has been gained and what might have otherwise been lost. D.C.R.G. has had a good year for better government.

PARTY OFFICE: The conservative majority membership of the Democratic Executive Committee has been increased to over 70%. Importance of this majority was again demonstrated when they filled a vacancy on the ballot for the office of County Sheriff with Clarence Jones, a man well qualified to do the job. On the negative side, well known Liberals who would have sought the office for "Big Gun" power knew the futility of applying. Further, future ballot vacancies are secure from liberal influence. There were five similar occurences in 1968.

PUBLIC OFFICE: Atwell, Boyle and Coats, all conservatives supported by D.C.R.G. defeated liberal opponents in May and June Primaries to become Democratic Party nominees for Texas Legislature. Two DCRG candidates lost legislative races in the May Primary. A fair beginning.

CONVENTIONS: ~~Precinct, District~~ and State Democratic Party Conventions were heavily swayed by DCRG activity. The 299 Dallas County Precinct Conventions went overwhelmingly to conservatives. All three Senatorial Dist. Conventions were in firm conservative control, resulting in Delegations to the State Convention who gave Dallas County a big say in turning back the liberals.

PARTY PLATFORMS: The Party Platforms that are adopted at State Conventions are usually drafted by the Party's nominee for Governor, or by his staff or advisers. These people, having one eye on the election of the nominee, try to make the platform as many things to as many people as possible; knowing that final decisions can be enacted only by the Legislature.

The Platform Committee at the State Convention is composed of one member from each Senatorial District, elected by the delegation from that District, plus five (5) members from at large who are selected by the Nominee, or the State Executive Committee Chairman for him. They do not have time in the few hours available at the Convention to pick to pieces the long draft that is prepared for them. However, they can act to show the tenor of the group. The Democratic Convention was conservative. D.C.R.G. Delegates from Dallas led the successful fight to incorporate Earl Luna's provisions against bussing of school children, and also defeated Liberal Senator Oscar Mauzy's attempts to write in a requirement that would have required voters to state Party affiliation when applying for Registration.

D.C.R.G. MEMBERSHIP MEETING

Biennial membership meeting will be held Thursday, December 3, 1970 at the Adolphus Hotel. Check Hotel directory for the room. All are invited. Active Members may vote. Time -8:00 P.M.

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT

"Kickin' Up Interest in Precinct Elections"
2727 CEDAR SPRINGS, DALLAS, TEXAS 75201 PHONE 748-2091

1970 YEAR OF DECISION

Regardless of what develops in State and local Politics, all will be overshadowed by the Democratic Primary Race for the U. S. Senate seat of RALPH YARBOROUGH in 1970. And this Race will include a strong liberal rally to take control of the Democratic Party through the Precinct Conventions. Dallas County with large delegations from Three Senatorial Districts, will be one of RALPH'S prime targets.

EFFECTIVE PARTICIPATION

HOW CAN I DO MORE THAN JUST VOTE? D.C.R.G. offers a partial answer to this question. Over 200 citizens have made financial contributions to this Conservative Organization in 1968 preparatory to the 1970 fight against Liberals in government. Funds are administered by a twenty-five member Board of well known conservative leaders with a flawless record of accomplishment. Welcome Participants !

Your check should be made payable to " D.C.R.G. " and returned in the enclosed envelope.

IT'S YOUR GOVERNMENT

PLAINTIFF'S EXHIBIT
Page 1

CURRENT RUMOR CORNER

Mike McKool looks like a sure candidate against Earle Cabell for Congress in the 5th District. Mike can do this and if he loses still retain his Senate Seat. His term expires in 1972...

Ben Barnes is getting good advice to oppose Ralph Yarborough. If he does, Senator Ralph Hall (from the 9th S.D. in Rockwall) will run for Lt. Governor.

Mel Price, County Commissioner, will have at least two opponents. All 200 Series Precincts take note ..... One of his opponents is a D.C.R.G. Precinct Chairman.....

Oscar Mauzy is already out registering voters in his block voting Precincts to improve his less that 1,000 vote margin of victory in 1966. Meanwhile many of this 23rd District constituents who don't think they can afford another four years of his big spending in the Texas Senate are volunteering to help him OUT .... ALL THE WAY OUT A very recent in-depth Poll of his District shows strong sentiment for a change to more responsible representation. Rumor is that D.C.R.G is interested.....

REGISTER REGISTER REGISTER REGISTER REGISTER REGISTER

Don't forget to register for 1970 and have your friends do likewise. You can be sure the opposition will do so. The time is now.

A DEMAGOGUE is a politician who takes advantage of social unrest for political gain. One dictionary says - " a leader who uses the passions or prejudices of the populace for his own interests; an unprincipled orator or agitator".

Which politicians are demagogues in the eyes of the Public?

Demagogues tend to vote FOR most appropriations and AGAINST taxes that are widely based. They try to create a different image between taxing the Crocer and taxing Groceries. Back home, they can tell constituents that they voted for them all the way. Have you heard any politician brag about all the spending bills he voted FOR ? AGAINST ?

BILLS THAT FAILED TO PASS OR WERE VETOED BY THE GOVERNOR

MAUZY - Bill requiring applicants for Voter Registration to state their Party affiliation and such information then printed on the certificate. Anybody stating " Independent " or "No Preference" would thus be automatically barred from voting in any Primary. This could result in both Party candidates - Democratic and Republican - being you know what ... (failed to pass)

McKOOL - Bill requiring County Commissioners to provide office space (at taxpayers expense of course) for all Legislators and Senators in their home county.....(vetoed by Governor Smith)

McKOOL - Bill making the 16th & 8th Senatorial District lines " simpler and more logical " --- a snake could not have followed the lines --- one good thing about this bill - for Mike of course, it would have made it legal for him to live in his old house , the one he had to move out of to reside the the 16th so he could run in the first place. ... Thanks to the Governor, we do not have to live with this Bill --- and neither does Mike.

MAUZY AND McKOOL BOTH VOTED FOR THIS ONE .....

Bill providing a raise of 75% (to $1,750) in EXPENSE MONEY for State Senators ---- of course this one passed.

D.C.R.G.

WHAT IS IT ?

WHAT DOES IT DO ?

The Democratic Committee for Responsible Government is the only continuing political organization in Dallas County dedicated to support of Conservative and Independent Candidates. Without the D.C.R.G. work, the Democratic Party machinery would reflect the McCarthy - McGovern - Kennedy philosophy of the national Party. Success in the local arena is evidenced by a two to one majority of Conservatives on the Executive Committee and a responsible, solid citizen, Earl Luna , as County Chairman. We expect to maintain our vigil in the 1970 Primary.

From this base of accomplishment there will be some ventures outside Party Office Races in 1970. The D.C.R.G. active membership now exceeds 10,000 and those members, through an aggressive Board of Directors, are asking for meaningful participation in selective State Senate and Legislative races. The foundation is being laid for some very active campaigns to replace Liberals in Austin. You will be hearing more.

Membership is voluntary upon recommendation by another member. It is a pleasure to present your Membership Card as an enclosure.

DEMOCRATIC COMMITTEE ~ RESPONSIBLE GOVERNMENT

TO: Dallas Business Community

RE: Democratic Primary
Saturday, May 2, 1970

Dear Sir:

Many business men complain after election day that they are not asked to participate in a meaningful way. This is to solicit the interest of your Company in better government.

D.C.R.G. is working to elect Lloyd Bentsen to the U. S. Senate, Earl Cabell to Congress, and John Wright to the Texas Senate. If you are for liberals Ralph Yarborough, Mike McKool, and Oscar Mauzy, you will have no interest in our work.

Political activity consumes millions of 6¢ postage stamps and, of course, many dollars. We ask you to return the enclosed envelope with a roll of stamps or a check payable to "D.C.R.G".

It's your country too!

Sincerely,

Joe Rich

Joe Rich

2727 CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 748-0307

Last Name | First Name | Initial | Precinct No.

Address | Zip Code | Telephone No.

MY CONTRIBUTION TO D. C. R. G. in the sum of $_____ is enclosed. I will further help defeat Liberal Candidates for Office as follows:

- ☐ Make a contribution of Postage Stamps.
- ☐ Support the Conservative Candidate for Precinct Chairman in my Precinct.
- ☐ Furnish a list of known conservatives to be added to D. C. R. G. mailing.
- ☐ Other_____
- ☐ I am not interested. Please remove my name from your mailing list.

I Pledge to use my best efforts to work for good government in Dallas County and in the State of Texas.

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT

"Ridin' Up Interest in Precinct Elections"
2727 CEDAR SPRINGS, DALLAS, TEXAS 75201 PHONE 742-0307

Dear Neighbor:

Do you want another "Yarborough" in Government? You can the key to Conservative Government in Texas. This Saturday the issue is simple: Conservative versus Liberal.

Unless you vote and elect PRESTON SMITH, the Conservative, as Governor, the ultra-Liberals and big Labor Bosses will win by default.

Zack Brown, President of the State AFL-CIO and a strong supporter of both Yarboroughs was quoted in the New York Times of April 30, 1962 as follows - "In six years a Governor can bench the back of the corporate structure in the State. He can appoint more than 6,000 members of Boards and Commissions and Councils - everything from Wildlife to Education - and they would control a billion dollars in annual expenditures."

Dallas County is the balance of power - Dallas County must vote overwhelmingly for Conservative Government to offset the Liberal areas of the State. Every vote for PRESTON SMITH is vital.

The Liberals are dedicated and will vote. ARE YOU ~~NOT~~ less dedicated in your beliefs?

Very sincerely yours,

Charles D. Isbell, Regional Aid

R. L. THORNTON, JR.
ED BRADY
WALTER MORGAN
MRS. GEORGE PAKENHAM
EARL LUNA
JAMES J. TURLEY

CONRAD THETFORD
S. J. RAY
GEORGE ROCK
MANUEL BAPTISTE
LONNIE VILLAGE

PLAINTIFF'S EXHIBIT 11

P. S. Every major candidate in the 1st Primary (Eugene Locke, Waggoner Carr, Ralph Briscoe and John Hill) is supporting PRESTON SMITH. They were in a good position to judge qualifications for Governor.

DEMOCRATIC COMMITTEE for RESPONSIBLE GOVERNMENT
"Kickin' Up Enough to Produce Elections"

YOU WON'T GET ANY MAIL FROM DON YARBOROUGH BECAUSE HE IS NOT WORKING YOUR PRECINCT. HE KNOWS IF IT TURNS OUT TO VOTE HE WILL LOSE. WELL — YOU HELP HIM LOSE!

PRESTON SMITH CAN WIN IF WE CAN GET THE VOTERS OUT.

THIS IS YOUR CHANCE!

GET ON THE PHONE FRIDAY & SATURDAY and stay there until you have every voter in your precinct voting.
(except Yarborough fans, of course)

VOTE SATURDAY FOR
PRESTON SMITH

3727 CEDAR SPRINGS DALLAS, TEXAS 75201 TELEPHONE 214 748-8207

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT

"Kickin' Up Interest in Primary Elections"
3727 CEDAR SPRINGS, DALLAS, TEXAS 75201 PHONE 748-0207

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The Liberals are dedicated and will vote. ARE YOU AND YOUR FRIENDS dedicated in YOUR beliefs?

Very sincerely yours,

Charles W. Kemp, Jr., Precinct 344

R. L. THORNTON, JR.
ED BRAKE
WALTER MORGAN
MRS. GEORGE PARKHOUSE
EARL LUNA
JAMES J. TERLING

CONRAY THETFORD
S. J. RAY
GEORGE ROCK
SAMUEL DeBOSE
LONNIE WILSON

PLAINTIFF'S EXHIBIT 12

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1537

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT
2727 CEDAR SPRINGS DALLAS, TEXAS 75201

Mr. & Mrs. Oscar Mauzy
1726 Matagorda
Dallas, Texas

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT
and
Election of Precinct Chairmen

"Kickin' Up Interest in Precinct Elections"

2727 CEDAR SPRINGS, DALLAS, TEXAS 75201 PHONE 748-0207

POLITICAL ALERT

Lt. Governor Preston Smith has asked for a meeting of all D.C.R.G. people. He will discuss matters of grave importance to Dallas and Texas at a meeting at 8:00 P.M. Thursday, May 23, in the Conquistadore Room of the Mariott Motel, 2101 Stemmons Freeway. Your presence is needed.

JOE RICH

GEORGE BOCK

CONWAY THETFORD

EARL LUNA

LONNIE WILSON

ROY ORR

1539

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT
and
Election of Precinct Chairmen

"Kickin' Up Interest in Precinct Elections"

2727 CEDAR SPRINGS, DALLAS, TEXAS 75201 PHONE 748-0207

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JOE RICH

GEORGE BOCK

CONWAY THETFORD

EARL LUNA

LONNIE WILSON

ROY ORR

1540

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT
2727 CEDAR SPRINGS DALLAS, TEXAS 75201

Mr. & Mrs. Oscar Henry
1726 Matagorda
Dallas, Texas

DALLAS, TEX.
PM
22 MAY
1968

ALWAYS USE
ZIP CODE

PLANTERS
PEANUTS

1541

D. C. R. G.
2917 CEDAR SPRINGS
DALLAS, TEXAS 75201

___YES I WILL PUT A YARD SIGN IN MY YARD FOR PRESTON SMITH.

___YES I WILL SERVE AS A WATCHER ON ELECTION DAY WHERE NEEDED FOR PRESTON SMITH.

___YES I WILL FURNISH A DRIVER AND CAR TO ASSIST VOTERS TO GET TO THE POLLS ON ELECTION DAY FOR PRESTON SMITH.

___YES I WILL ORGANIZE A TELEPHONE COMMITTEE IN MY PRECINCT TO GET OUT THE VOTE FOR PRESTON SMITH.

___YES I WILL SEE THAT EVERYONE IN MY PRECINCT IS WRITTEN A LETTER URGING THAT THEY VOTE FOR PRESTON SMITH.

___YES I WILL AUTHORIZE MY NAME TO BE USED IN ANY ENDORSEMENT ADS OR IN LETTER MAILINGS IN SUPPORT OF PRESTON SMITH.

_____NAME

_____ADDRESS

_____ZIP CODE _____PHONE

_____PRECINCT NUMBER

1543

You can just sit around & wring your hands OR you can get to work & do something about this.

#1. Attend the meeting Thursday night May 23.

#2 Alert your friends & get them to vote absentee if they will be out of Town June 1.

#3. Fill out & Return the inclosed check list FAST

Time is running out!

The Dallas Morning News SUNDAY, MAY 19, 1968

Smith's Uphill Battle

ONLY THREE TIMES in the history of Texas has a Democratic candidate for governor come from behind in the first primary to win nomination in the runoff. These are the incredible odds that Lee Preston Smith is up against.

Pat Neff in 1920 trailed Joe Bailey by less than 3,000 votes and came back to win. In 1924 Mrs. Miriam (Ma) Ferguson turned the trick, as did Ross Sterling in 1930. Sterling's opponent, by the way, was Mrs. Ferguson.

Not for 38 years has the second-place finisher in the first primary been able to rake together enough additional votes to turn back the frontrunner. Young conservatives and contented people in Houston, Dallas, Fort Worth, Beaumont, Amarillo and Wichita Falls, for example, stopped Ralph Yarborough, who led the field, from getting over the hump.

Although Yarborough has twice tried and failed to win the office, he is no pushover. In 1962, he gave John Connally the fight of his political life. Connally led by 112,812 votes in a 6-man race, but by runoff time Yarborough had whittled that gap to a mere 26,280. Final one election tally, the other Connally picked up 134,000 more votes, but Yarborough added 231,000.

As tough as the assignment may be, Smith's supporters can take heart from something else that happened in 1962. Liberal James Turman led Smith by 70,000 votes in the first primary for nomination as lieutenant governor. But Smith came on strong in the runoff to win by 31,708.

He has done it before, but can he do it again? The answer can be "yes" only if the supporters of Waggoner Carr, Frankie Carter, Ralph Briscoe and other moderate-conservative candidates fully forget their verbal brawls.

Carr, Carter and Briscoe have [illegible] out to Smith. They have done it not just because Smith shares their vision of progressive yet responsible government, but also because Smith is a demonstrated leader of talent and integrity.

He is eminently qualified by experience and background to serve his state as chief executive. Dick West's At Random column on this page today gives readers a look at Smith, the man, as well as Smith, the public servant.

Smith has made many friendships in his 18 years in state government—six as representative, six as senator and six as lieutenant governor. His followers cover all the lines of ideology and geography. Rural counties gave him overwhelming support in the May 4 primary, but he trailed Yarborough in the four largest metropolitan counties.

Yarborough got the backing [illegible] who lost [illegible] supporters either of the same sense but no [illegible] Right. They have to consider that will be back in less than two weeks trying to name leaders of the [illegible] organization.

It could happen, certainly, but there is one overriding reason that it shouldn't: Texas is not a liberal state, as the first primary results prove.

The four big conservative vote-getters amassed more than a million votes; Yarborough, 812,000. Yet the time to whom the votes has now been passed, Smith, trailed Yarborough by nearly 36,000.

If conservatives will get out and vote—and any registered voter who didn't go to the Republican first primary or sign a George Wallace petition can vote in the runoff—Smith will win.

The bigger the turnout, the larger Smith's margin of victory. Conservatives can keep state government in responsible hands if they will [illegible] the polls for [illegible]

DEMOCRATIC COMMITTEE
for
RESPONSIBLE GOVERNMENT
and
Election of Precinct Chairmen

"Keep Up Interest in Precinct Elections"

2727 CEDAR SPRINGS, DALLAS, TEXAS 75201 PHONE 748-0207

PRECINCT CHAIRMAN RUN-OFFS

We aren't through with our Precinct Chairman races yet - We have four of our DCRG candidates in a run-off and let's not forget them -

Pct. 132 - Kenneth Bobkoff
Pct. 136 - Paul Underhofler, Jr.
Pct. 185 - John Gotz
Pct. 347 - Mac Blanton

If you live in the neighboring precinct to any of these people, or if you know of anyone living in their precinct, please give them your help and your support.

Famous Quotes from History

1492 - When Columbus sailed, "Don't worry, he will sail right off the edge when the ocean quits."

1776 - In England, "Don't worry about those Colonies, they can't win."

1957 - In Texas, "Don't worry about Ralph Yarborough, we beat him for Governor twice and we can beat him for Senator."

Don't Let This Be The Famous Quote of 1968

"Don't worry about Ron Yarborough, the conservatives have more than enough votes to beat him."

Come to Work for Preston Smith!

This is What HANK BROWN & His GANG are doing to oust Don Yarborough —

What are YOU doing to oust PRESTON SMITH

Don't you overlook this part. The runoff is the Saturday after Memorial Day on Thursday & a lot of our friends will be out of town. Get them to vote absentee between May 22 & May 28 at the County Clerk office. They will be open Saturday May 25 from 8 to 5.

...AS AFL-CIO

[redacted]

Dear Union Union Leader, May 11, 1958

Do you know Don Yarborough as governor or more of the same?

Texas AFL-CIO COPE Administrative Committee has decided to go all out to help elect Don Yarborough governor. The Executive Board has authorized full use of the union [redacted] to back up the action.

This is the program:

1. Each local union should immediately take action to contribute $5 cents per member to be paid in a lump sum or pledge to pay five cents per member a month for 10 months.

2. Each full-time union representative and leader is requested to contribute $100.00 to the Texas Labor Fund within the week.

3. Area AFL-CIO Councils must match the Texas AFL-CIO's grant for their get-out-the-vote campaign.

If you will do your share toward making this fund-raising program work, then the Texas Labor Movement will undertake the most massive all-out campaign in our history.

This is what we will do:

1. Half of the funds will be returned to Area Councils which presents workable programs for getting out the vote. They also must promise to match the Texas AFL-CIO grant, even if it means putting a 5 cent or collecting stamps per capita taxes from affiliates.

2. The other half of the money will go into minority group block voting programs all over the state. It is in these areas that the people are convinced that the election of Don Yarborough will better their lives.

3. Area councils will set up phone committees in each local union or at a central office to contact all union members to urge them to vote. Absentee voting will be emphasized.

4. Area Councils will cooperate on getting out yard signs, car-top signs and other campaign materials.

5. Area Councils will help coordinate block voter programs in all priority precincts. The program will be assisted by full-time union representatives.

The reason for this all-out campaign should be obvious. We have the rare opportunity of helping to elect a governor whose program calls for increased workmen's compensation, a [redacted] job safety law and a $1.25 minimum wage.

The success of the campaign is in your hands. Either you help pass or be fails. We are confident you will do your job. The alternative is another anti-labor administration. Time is short.

Yours for victory,

H. A. Bush Brown
President

Ray R. Brown
Sec.-Treasurer

[redacted]

HANK BROWN WANTS A GOVERNOR HE CAN CONTROL & DON YARBOROUGH IS HIS BOY!

1545

Mr. & Mrs. Oscar Haury
1726 Matagorda
Dallas, Texas

DEMOCRATIC COMMITTEE
for RESPONSIBLE GOVERNMENT
3737 CEDAR SPRINGS DALLAS, TEXAS 75201

1546

ABOUT DON YARBOROUGH, OLD RALPH SAID—

"We're on the verge of electing the first loyal Democratic governor since Jimmy Allred was governor 30 years ago. The people of Texas are entitled to elect a governor at least once every 30 years."

U.S. SENATOR RALPH W. YARBOROUGH

AND DON STILL SAYS: "I'm not LIBERAL!"

Voter Apathy Big Factor For Smith, Yarborough

AN ANALYSIS

The Dallas Morning News

AND HE AIN'T LIBERAL??

DEMOCRATIC COMMITTEE for RESPONSIBLE GOVERNMENT and Election of Precinct Chairmen

"Let Us Unite in Precinct Elections"

5727 CEDAR SPRINGS, DALLAS, TEXAS 75201 PHONE 748-5897

DONT WORRY ABOUT IT & DONT WORK and you will WAKE UP Sunday morning & find that Don Yarborough has been Preston Smith!

IF YOU WANT TO WORK, HERE IS HOW.

TRANSPORTATION CHAIRMAN- Jim Lee RI7-6180

YARD SIGNS- JAMES TEELING III RI2-9163

POLL WATCHERS- FRANK RIGNEY- RI1-5311

IF you Can drive people to the polls, want a Sign in your yard & Serve as a poll Watcher Call them men! DO IT NOW!

ALSO DONT FORGET- VOTE FOR DOUG BERGMAN in the Special Runoff Sat.

1547

At Random

Preston Smith and Shoe Leather

By DICK KLEIT
Editorial Editor

PRESTON SMITH faces an uphill fight to keep "my liberal opponent," Don Yarborough, in the June 1 runoff for governor.

He can win—and Texas can continue to have progressive but sound government — if conservatives vote. If they don't, then the Yarborough philosophy may move into the liberties next January.

The number's personal navigator, the Rev. John R. Cornelius, faced a similar situation six years ago. He did this unique thing: he walked from precinct to precinct in the first primary election in which

[illegible] was by [illegible]

Cornelius didn't go to church to get the votes. He went to the people. He went to their homes, their places of business, their lodges. He went to their fraternal meetings. He went to their social clubs. He went to their political clubs. He went to the [illegible] of the [illegible].

The Democratic governor stopped short in six days with a pooch, take his vote of May 4 and automatically assume he'll get Leake's and Carr's and part of Roberts's.

A runoff is a new ball game.

New issues are injected. Voting patterns change. Two men and two men only square off against each other and sometimes new alliances, long new enemies of friends and such fascinating to accomplish in only a few weeks the final objectives of the state's highest political contest.

BEFORE A GROUP of 200 Dallas businessmen are pleasant but weak. Smith was frank and honest about the difficulty ahead.

"Gentlemen, there are enough conservatives and moderates to win this thing if they vote. I can't get them out. You'll have to help me."

The issue is simple. Either we have this state run by the Yarborough liberals, or we continue the sound government fostered under Jester, Shivers, Daniel and Connally. It is up to conservatives to decide which they want.

PRESTON SMITH CAN'T Win — but you can. You are the one to get the people in your precinct to vote this Saturday.

← IF THIS DOESN'T SCARE YOU — YOU JUST DIDN'T READ IT.

It will be too late Sunday to say "I wish I had tried just a little harder."

Morning News Sunday, May 12, 1968

Writer to Join Candidate's Staff

Washington Bureau of The News

WASHINGTON — [illegible] press aide to Don Yarborough will join [illegible] staff [illegible] Democratic [illegible] Texas [illegible] Yarborough [illegible] [illegible] Yarborough [illegible] [illegible] Yarborough [illegible] [illegible] [illegible]

1548

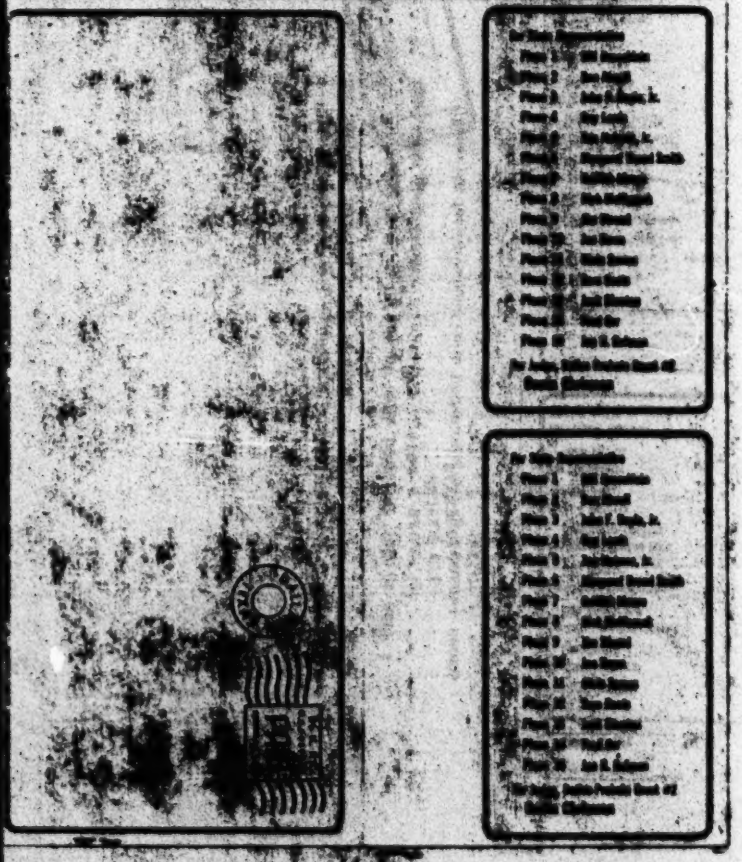
You all that are duly qualified on the Democratic Primary Ballot
for Saturday, October 7th, 19__

Candidates listed on the back of this ballot will appear on your
Democratic general election ballot.

Please use the following code for Saturday's primary election:

For U. S. Senate
Lloyd Bentsen
For Attorney General
Crawford C. Martin
For State Land Commissioner
Bob Armstrong
For School Commissioner
Ben Barnes
For Supreme Court of Texas
Hawthorne Phillips
For U. S. Congress
John Tower
For State Senate
John Wright
For District Clerk
446 Morris E. Hall

For U. S. Senate
Lloyd Bentsen
For Attorney General
Crawford C. Martin
For State Land Commissioner
Bob Armstrong
For School Commissioner
Ben Barnes
For Supreme Court of Texas
Hawthorne Phillips
For U. S. Congress
John Tower
For State Senate
John Wright
For District Clerk
446 Morris E. Hall



KIRBY PARK AREA CONSERVATIVE
DEMOCRATIC PRECINCT CHAIRMEN

May 1970

TO: VOTERS OF PRECINCT # 448

SUBJECT: MORRIS E. HOLT FOR PRECINCT CHAIRMAN

We, the undersigned Precinct Chairmen of precincts in this area, respectfully recommend to you, in the interest of harmony and maintaining control by Responsible Citizens of our County Executive Committee, that you -

VOTE FOR MORRIS E. HOLT TO THE OFFICE OF PRECINCT CHAIRMAN.

Voting records show that this precinct votes 2 to 1 conservatively; as indicated by -

RUNOFF FOR GOVERNOR - 1968: Preston Smith 348 64%
Don Yarborough 173 32%

Mr. Holt's opponent is believed to be actively associated with elements of the Democratic Party whose principals are far removed from the borders of this State.

We also wish to call to your attention that some Precincts MAYS NOT appear there in which Count Every conscientious citizens voter registration drive. If we are to have a State Senator who will represent a majority of our people rather than segments, our precincts must turn out a large number of voters. We recommend that you remind your friends to vote and that YOU vote for John Wright for State Senator.

AND THAT YOU ATTEND YOUR PRECINCT CONVENTION - Immediately after the Polls close at 7:30 PM at the place of voting.

A(1)-Bennie M. Talley

A(2)-Mrs. Charles Lamb

A(3)-Joe M. Carpenter

A(4)-Mrs. E. L. Smith

A(5)-Lennie Wilson

A(6)-Thomas L. Mahaffey

1552

April 29, 1970

Dear Neighbor,

You may not live next door, but we are neighbors nevertheless, in that we live in the same precinct. I have lived in this area for fifteen years, and in Dallas County twenty-one years. I am 47 years old, married, and have a son 17 and a daughter 14 years of age. We are active in a local Baptist church. I am a native Texan, born in Grayson County, and served as a bomber crew member in World War II. I attended Kilgore Junior College and Southern Methodist University, and have worked for a local construction company for 20 years.

I am a conservative Democrat who believes in responsible government, and am patriotic to our country.

I would like to represent you as Precinct Chairman. Will you come to the polls May 2nd and VOTE? May I ask you to vote for me. My name will be the last one on the ballot.

Sincerely,

Morris E. Holt

Morris E. Holt
Candidate for Democratic
Precinct Chairman, 446

P.S. Be sure and come early for the Precinct Convention. It starts at 7:30 P.M. and will be held at the polling location.

APR 16 1970

WOODRUFF, HILL, KENDALL & SMITH
ATTORNEYS AND COUNSELORS
211 N. Ervay Bldg. (Box 1225)
Dallas, Texas 75201

April 15, 1970

PLAINTIFF'S EXHIBIT 12

Democratic Committee for
Responsible Government
2727 Cedar Springs
Dallas, Texas 75201

Gentlemen:

I am enclosing a Circular sent out by your organization. Apparently this Circular has had wide distribution as I have had several people forward a copy of it to me and many more call me on the telephone about it.

The Circular contains a newspaper article regarding the receipt of $1,000.00 fees by myself and Senator Oscar Mauzy for our services in connection with representing Dallas County in the purchase of punch card voting devices.

It is obvious that the Circular was circulated to discredit Senator Mauzy by implying that he and I were illegally hired by the Commissioner's Court, over-paid for our services and that we were in the employ of the Company who the County contracted to purchase the voting machines from.. My name is underlined in the newspaper article and you have placed an "arrow" directly at my name at the commencement of the newspaper article.

It is obvious that you have linked my name with that of Senator Mauzy in the same chain. It amounts to accusing me of the same things that you accuse Senator Mauzy.

This letter is written for two purposes. First, some of the allegation made and implied by you in your Circular

insofar as they relate to me are true. There was absolutely nothing illegal about my employment to represent the Commissioner's Court in the handling of this particular law suit. Had there been anything improper then obviously some question would have been raised either at the hearing approving the payment of my fee or by one of the other officials at the Courthouse responsible either for signing the check or approving such payment. For your information the fee I received covered a tremendous amount of pre-trial work, including several hours of briefing a very complicated and technical legal problem, a full scale hearing on a Temporary Injunction before the Court and a subsequent Court appearance in connection with the filing of a Motion for Summary Judgment. And I made a charge based upon the fee schedule proposed either by the Dallas Bar Association or the State Bar Association, thus for the hours I spent on this case my fee would have been considerably larger than that actually received. I am sure that Senator Mauzy put in as many hours as I did working on this case and he also feels that the fee received was without any question, extremely reasonable.

Secondly, since you have seen fit to send out your Circular containing my name and making the accusations and implications which I have set out above, and whereas I am not a public official in any sense of the word, having never run for public office, then I am requesting that you immediately issue a Circular to the same individuals and parties who received your original Circular, advising them that you did not intend to accuse or imply that I was in any way connected with the accusations made by you in said Circular against Senator Mauzy. Specifically, I want a statement in such Circular that you do not have any facts or information that I was illegally or improperly hired by the County of Dallas in the punch card voting suit, that I was paid an excessive fee for my services, and that I have ever been, nor am I now, in the employ of any Company in the electronic voting equipment business.

Unless the request stated in the above paragraph is immediately forthcoming by your organization, then I intend to file

such legal action against you and the individuals comprising your organization for the damages I feel I have suffered as a result of the circulation of your unauthorized Circular. I trust that you will act promptly on this matter otherwise I will proceed as outlined herein.

Very truly yours,

/s/ Robert M. Hill

ROBERT M. HILL

RMH/hw
cc: Mr. Oscar Mauzy
Attorney At Law
National Bank & Life Bldg.
Dallas, Texas 75201

PRECINCT COMMITTEE FOR LLOYD BENTSEN

TO: RESPONSIBLE VOTERS

This letter may be too sophisticated or controversial to send out generally, but we think that the people in your precinct will receive it in the manner intended; i.e., a frank and objective analysis of the candidates in the race for U.S. Senate.

What difference, that matters to voters, is there between George Bush and Lloyd Bentsen? Objective voters have to look behind the campaign smoke and the glamour of TV to find out. Enough has been developed at this point to obtain a clear picture and give the voters a choice on the merits.

1. Bush voted for and co-sponsored the "Guaranteed Annual Income" Bill in the House. Bentsen opposes this. He contends that this will encourage people not to work, will add tremendously to the numbers receiving government checks, will not solve the welfare problem, and will additionally increase the Washington influence on the voters of our State.

2. Bush wooed and gained the endorsement of Jimmie Hoffa's Teamsters Union, with such statements as: "I think the legislation governing collective bargaining practices is adequate". The Teamsters feel that they have done well under this "adequate" legislation. Bentsen refused to take such a position.

3. Bentsen has strongly opposed School "Busing" and the current HEW lawsuits and pressures.

4. Bush voted for the 1968 Gun Control Law in the House. Bentsen opposes this type legislation.

5. Bush wooed and obtained the endorsement of the radical "Rebuilding Committee", headed by Curtis Graves, who is the militant State Representative from Houston.

6. Legislation affects our pocketbooks and (excuse us for mentioning it) our rights. Who, but Bentsen, can give us a strong conservative voice in the Democratically Controlled Senate and look after our interests? Why support the rest?

BENTSEN IS KNOWLEDGEABLE, IS IDEOLOGICALLY THE BETTER MAN, AND IS A MEMBER OF THE MAJORITY PARTY. THE CHOICE SEEMS CLEAR TO US. IT HAS TO BE BENTSEN.

RESPECTFULLY SUBMITTED,

PLAINTIFF'S EXHIBIT No. 16

Lawrence M. Bolton
Precinct 176

Johnnie Jones
Precinct 156

Joe M. Carpenter
Precinct 445

George Bock
Sen. District No. 8

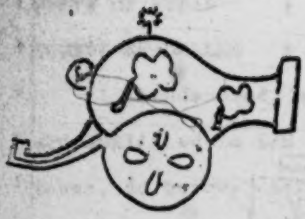
Robert W. Smith
Sen. District No. 16

Ray Orr
Sen. District No. 13

Bob Gibson
Sen. District No. 8

Jack Hanson
Sen. District No. 16

Lonnie Wilson
Sen. District No. 13



ANNOUNCING

PLAINTIFF'S EXHIBIT

TO: D.C.R.G. 8th Senatorial District
Precinct Chairman

IT'S THAT TIME AGAIN !!!!!

Oscar Mauzy is gearing up his well oiled machine..... 741-1656

Mike McKool is making noises about running for Congressman.....

And of course,

Dear Ole Ralph is already counting his votes.....

TIME IS WASTING !!!!

We sure need to put these boys out to pasture and we need to get together for a SHORT meeting. Please make ever effort to attend.

PLACE: Walnut Hills Recreation Center
Room Number 1
10011 Midway Road

TIME: 7:30 P.M.

DATE: Wednesday, November 5th

Conway Thetford
8th District Co-ordinator

DON'T MISS IT

1558

THE DALLAS TIMES HERALD

CITY NEWS

Thursday, May 1, 1975

....A—20

20—A.... Thursday, May 1, 1975, DALLAS TIMES HERALD

Violations Charged In South Dallas Vote

Complaints that some election officials in Democratic primary violated provisions of the Texas Election Code May 3a have been filed Thursday by the Dallas County grand jury.

Sources said the alleged violations in South Dallas precincts included voting illegal ballots or votes by the voting booths.

Poll watchers hired by various candidates reported violations. In many cases the poll watchers were employes of private security agencies, sources said.

Under the law, poll watchers have the duty of telling any violation of the election judge. They

— See VOTE on Page 2A

☆ VOTE

Continued From Page 1D

contact in writing all violations, and give one copy to the election judge and another to the county judge.

If the violation is considered flagrant, a copy is also to be turned over to the grand jury.

Three Democratic party officials—Jay Elwood Dalbosh, and George Bush — reportedly were circulating through South Dallas precincts Saturday warning "the rich are" in certain election officials, sources said.

One election official reportedly removed himself from a confrontation with them to stay inside one of the voting booths with a voter, then returned to resume the confrontation.

PLAINTIFF'S EXHIBIT

STATE OF TEXAS ‖

COUNTY OF DALLAS ‖

I, Linda Eidd, a Notary Public duly commissioned and qualified in and for the County of Dallas, State of Texas, do hereby certify that, pursuant to the agreement hereinbefore set forth, there came before me on the 31st day of December, 1971, at 2:00 o'clock p.m., at the offices of MULLINAX, WELLS, MAUZY & BAAB, INC., 1601 National Bankers Life Building, Dallas, Texas, the following named person, to-wit, MR. GEORGE BOCH, who was by me duly sworn to testify the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, and that the signature of the witness to his deposition was waived by all parties present, pursuant to the stipulation heretofore set forth.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties of the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties

hereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 2nd day of January, A. D., 1972.

Linda Eidd

LINDA EIDD, NOTARY PUBLIC IN AND FOR DALLAS COUNTY, TEXAS

My Commission Expires June 1, 1973

herein, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this [illegible] day of January, A. D., 1953.

[illegible]
NOTARY PUBLIC IN AND FOR DALLAS COUNTY, TEXAS

My Commission Expires June 1, 1953

ORAL DEPOSITION OF CRAWFORD C. MARTIN

[redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL
VS. NO. A-71-CA-142
BEN BARNES, ET AL

DIANA REGESTER, ET AL
VS. NO. A-71-CA-143
BOB BULLOCK, ET AL

JOHNNY MARRIOTT, ET AL
VS. NO. A-71-CA-144
PRESTON SMITH, ET AL

VAN HENRY ARCHER, JR.
VS. NO. A-71-CA-145
PRESTON SMITH, ET AL

APPEARANCES

Mr. David R. Richards, of Austin, Texas,

Appearing on behalf of Plaintiffs, Diana Regester, et al

Mr. Robert M. Greenberg, of Dallas, Texas,

Appearing on behalf of Plaintiffs, Johnny Marriott, et al

Mr. Mickey McGuire
Mr. Nathan W. Hazen
of San Antonio, Texas,

Appearing on behalf of Plaintiffs, Van Henry Archer, Jr., et al

APPEARANCES - (Cont'd)

Mr. Stuart Nelkin
Mr. David Berg
Of Houston, Texas,

Appearing on behalf of Plaintiffs, Curtis Graves, et al

Mr. Walter Irvin
Mr. Cleo Steele
Of Houston, Texas,

Appearing on behalf of Plaintiff Intervenors, Washington, et al in the Tyler Case

Mr. Ed Idar, Jr., of San Antonio, Texas,

Appearing on behalf of Intervenors in the Tyler Case

Mr. E. Brice Cunningham, of Dallas, Texas,

Appearing on behalf of Intervenors, Conrad, et al

Mr. Earl Luna, of Dallas, Texas,

Appearing on behalf of Defendant, Roy Orr

Mr. Sam McDaniel, Assistant Attorney General of Texas, Austin, Texas,

Mr. Al Curry, of the firm of Fulbright, Crooker, Freeman, Bates & Jaworski, of Houston, Texas,

Appearing on behalf of Defendants

- - - - - -

DEPOSITION of CRAWFORD C. MARTIN, a witness of lawful age, taken on behalf of the Plaintiffs, Diane Bagwater, et al, in the above entitled cause, pending in the District Court of the United States for the Western District of Texas, Austin Division, pursuant to the notice heretofore issued and the agreement hereinafter set out, before Harry L. Weer, a notary public in and for Travis County, Texas, at the Supreme Court Building, in the City of Austin, Travis County, Texas, on the 27th day of December, 1971.

MR. RICHARDS: Do you want to consider, Sam, that this is taken by -- I guess it is taken pursuant to notice; inasmuch as General Martin is a defendant, do you -- he is a defendant in some of the cases?

GENERAL MARTIN: I am a defendant in some, and not in some of the others.

MR. RICHARDS: I didn't know whether Sam wanted to treat it just by notice, or how you wanted it.

MR. McDANIEL: I have no objection to treating it as if it were taken by notice, and my only thing is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that

it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And so we -- do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving General Martin's unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present General Martin's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. McDANIEL: That is correct. That is correct.

MR. LUBA: For the State Chairman, we do not waive our right to cross-examine him at the trial, and in the event he should not be available at trial, we do not then waive the use of this -- if he is

available, but is not placed on the witness stand, we don't waive our right to cross-examine him at the trial.

MR. RICHARDS: Well, let me be sure I understand. Suppose that General Martin is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of trial?

MR. LUNA: I reserve the right to examine him in person.

MR. RICHARDS: Well, then, at least you are on notice from me that it is going to be my position that if you have questions to ask General Martin, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are here pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as first-hand testimony.

MR. LUNA: I understand.

MR. RICHARDS: All right. Sure.

MR. LUNA: I may ask him some questions today, but I am simply not waiving any of my rights by participating in this deposition that I don't automatically waive thereby.

MR. RICHARDS: Is there anybody else who has got a position, attorneys who are present who want to put any position of record in the case?

CRAWFORD C. MARTIN,

a witness named in the notice heretofore issued, being first duly sworn in the above cause, testified on his oath as follows:

CROSS EXAMINATION

Questions by Mr. Richards:

Q I guess, for the record, at least, your name and title?

A I am Crawford Martin. I am Attorney General of Texas. I have been Attorney General of Texas since the first day of January, 1967, and I am the Attorney General as of this date.

Q Before becoming Attorney General, what was your position?

A I was Secretary of State of the State of Texas from January, 1963 until I resigned in the middle of March of '66 to make the race for Attorney General.

Q So, you were Secretary of State from January of '63 through mid-'66?

A About March of '66, when I resigned as Secretary of State and made the race for Attorney General, and, of

course, I took office in January of '67 -- I mean, of '63 -- of '67. Excuse me. I will get it right in a minute.

Q I guess before that time you were a State Senator from Hill County or Hillsboro?

A That's right. I was elected State Senator in November of '48, and I served up until, I think, two days before I was sworn in as Secretary of State.

Q Roughly fifteen years in the Texas Senate?

A That was about fourteen years in the Senate.

Q And you are, of course, a practicing lawyer -- well, at least a lawyer admitted to the Bar of the State of Texas?

A Correct.

Q And have engaged in the private practice of law at times --

A Prior to my coming to Austin I engaged in the private practice of law from 1939 -- I got my license in 1939 -- up until I came, moved to Austin in January of '63, with the exception of three and a half years which I was in the Service.

Q Yes, sir. The questions that at least I will be asking here will be directed, I think, in the main, at the procedures of the Legislative Redistricting Board as regards the reapportionment of the Texas

House as distinguished from the Texas Senate.

A Yes, sir.

Q You served as Chairman of the Legislative Redistricting Board; is that correct?

A That is correct, except for the first meeting, and I was absent.

Q Right.

A The first meeting, and I was elected Chairman during my absence, and I took over as Chairman at the second meeting of the Board.

Q How many meetings did the Board have altogether?

A It was -- I will have to count them up. There was the first meeting, and we had a second meeting in the old Supreme Court Chamber. We had two there. We had one meeting down in the Senate Hearing Room, and then we had the meeting in which the Senate Bill was presented, and then we had another meeting in which the House Bill was presented and signed. When I say "presented," it was presented and signed by at least three members of the Board. I believe that is the number.

Q That would be five meetings, I believe, if I counted correctly?

A That is correct, sir.

Q These were -- and each of these meetings were public meetings; is that correct?

A Yes, sir, the public was invited. Public notice was posted in the hall of the Capitol, and newspaper notice was given in each case.

Q Were there any meetings of the Board other than these five public meetings?

A No, sir.

Q What procedures, if you could tell us, did the Board follow in gathering the evidence that it relied upon in promulgating the House Redistricting Plan?

A When the Supreme Court in its decision declared that the Board was in session, we immediately sent out notice to the newspapers and to those people who had written in, sent out by letter and by newspaper columns, and television and radio, that the Board would meet and we would hear evidence, and then as to the time and place, we served notice by letter or by telephone to those who had indicated they wanted to be heard, so that they could come, and, as previously stated, we posted the notices required by law; even though we are not certain that the law, Open Meeting Law, applied to this Constitutional Board, we did comply with -- we posted notices in the Secretary of State's Office and in the hall next to the Secretary of State's Office, and we also gave notice or press release to the pressroom and to the

wire services and others that there would be a hearing, and all were welcome to be heard, and the first session that I had, I served notice from the Bench, as Chairman, that we would hear any and everyone, and there would be no time limit placed on their time or the number of witnesses that anyone might want to present.

Q All right. And I take it that with respect to the House, at least, two hearings were held; is that correct?

A Yes, sir.

Q And I think the third meeting was when you promulgated the ---

A The House Reapportionment Plan; correct, sir.

Q Well, then, is it fair to say that all of the evidence that the Board had before it in promulgating the House Plan was that evidence developed at the two hearings that the Board held?

A No, sir, that wasn't all of the evidence. We took into consideration the letters and correspondence and maps and the various members of the Legislature and individuals who would present things to us during the time that it was under consideration. We considered that in addition to the sworn testimony -- well, yes, I believe it was sworn testimony in front of the

Commission itself.

Q All right. And then I take it you, as Chairman of the Board, have maintained a file or record of the written communications that were made to the Commission?

A Yes, sir; and then the minutes and the transcript of what was said was taken by a shorthand reporter and was filed with the Secretary of State.

MR. RICHARDS: You were going to make that available for us, Sam. Can you give us that now while we are in the course of the deposition, that is, the written record?

MR. McDANIEL: We do not have the written record.

MR. RICHARDS: I don't mean the record; I mean the file of the communications with the Board.

MR. McDANIEL: I don't know whether we have pulled that or not. Have we?

A I couldn't answer that question.

MR. McDANIEL: We haven't had anybody here over the Holidays.

MR. RICHARDS: Well, you have had somebody around to prepare motions and orders. Maybe you can find somebody now to pull that file while we are in the course of the deposition, which was part of our

request. Would you mind?

MR. McDANIEL: If you want to hold up the deposition.

MR. RICHARDS: I don't think -- I think we can proceed with the deposition while somebody surely on your staff can pull together that information.

MR. McDANIEL: Well, all right. Just don't proceed with it in my absence.

MR. RICHARDS: Well, while we are on the record, you committed to me and to Mr. Eason, as I recall, in the Federal Court last week, that this would be available to us. Is that your recollection, Mr. Eason?

MR. McDANIEL: I said that I would make it available to you. I did not say that it would be available at this particular hour on Monday morning.

(Thereupon, a brief recess was had, (after which the proceedings were (resumed as follows:

MR. McDANIEL: I am told that these are they.

MR. RICHARDS: Thank you, Sam.

MR. McDANIEL: Uh-huh. Gentlemen, we don't mind how much you look through them. We don't want any of them taken out of here. We will be happy to

have any of them copied.

MR. RICHARDS: Sure. Oh, yes. We wouldn't remove them. We would just simply ---

A In addition to that, we -- I don't know whether that contains some maps. We received some various and sundry maps, and they are around here somewhere. I will try to find them for you this morning.

MR. RICHARDS: Okay.

A And they are not -- I did not receive any -- most of the maps, nearly all of them were just parts of the State.

Q Sure, people interested.

A People, Representatives or Senators who -- well, we are talking about Representatives this morning. Representatives who desired their District to be laid out in a certain manner, and we received those. I don't think they are in this, because they are rolled up. They are around here somewhere.

Q Then, if I summarize it correctly, the evidence that the Board, as you understood it, took into consideration was that which was produced the two days of public hearing, and then evidence that was contained in or contentions contained in communications, written communications received by the Board, either from interested citizens or legislators; is that correct?

A Yes, sir.

Q As to the latter category, I understand that you have now produced for us the file which contains all of those written communications; is that correct?

A Well, of course, so far as I am concerned, I don't keep files. As far as I know, if my file clerk says that's it, why, that's it. I haven't seen it. In other words, the way I operate my office is, things come in, and I put them in the file basket, and as far as I know, this is it.

Q All right.

A There could be some other letters that may have been mis-filed, but as far as I know, that's it.

Q And there is, of course, the one other exception that you have already indicated to us, the rolled up maps, you did not keep ---

A They are not in here. They are around here somewhere, but I will try to produce those for you, if you want them. Most of them, with one or two exceptions, were just maps in which a Representative came up or mailed to me how he would like to have his District laid out, and, if I remember correctly, I think there were twenty-three of these.

Q Twenty-three such maps received or ---

A Well, either maps or parts of maps.

Q Parts of maps?

A Yes. As far as I know, I don't know that I have twenty-three rolled up maps. Part of them were folded and put in here, that I can't -- I mean, I can't tell you the number, but I do remember the figure twenty-three were the ones that I did receive from Representatives.

Q All right. The file that you have produced for us just this moment, does it relate to both the House and Senate, or just the House?

A I couldn't tell you.

Q All right, sir.

A This is on reapportionment, and some of the letters they wrote about both; some of them wrote about different ones, and as far as I am concerned, we didn't try to segregate that from it. So far as I know, the clerk's instruction was just to keep this in a separate file. This did not go into our regular files. This was kept separately, and as far as I know, this is what was come in.

Q Probably includes both House and Senate?

A I think some of it is, yes, sir. You would have to pick it out, and, in other words, some citizens that-- I didn't mean to confine that just to Representatives, that twenty-three were just Representatives. When the

citizens write, well, they write about Senatorial Districts, and a Representative District, and some of them didn't, and some of them did.

Q Okay. Then, so, again, we have the two categories, I take it, of evidence or contentions received, and that is the testimony in the two days of hearings, and then the material contained in the files that you have now produced. Was there any other evidence that you know of that was taken by the Board and considered in formulating its decision?

A Nothing except, of course, conversations with the people who were interested in the matter, oral conversations. I can't speak for the Board, but I am sure that there were conversations between members of the Board and citizens.

Q At least, insofar as you were concerned, in addition, then, to the matters that are of record ---

A Yes, sir.

Q --- or in the files, there were oral communications that you had with various people that you took into consideration in reaching your decision?

A It was my opinion at that time, and I still hold the opinion that this was not a court of record, and we were not a legislative body, and we more or less did like the Federal Courts do sometimes. We just decided

that we would take evidence as it -- in other words, all evidence that was presented to us, and base our findings on what was presented, ---

Q So, actually, ---

A --- what came to our attention.

Q So, actually, sort of neither fish nor fowl, neither a legislative body nor a court of record; is that correct?

A That is correct. It is a unique body as far as law is concerned.

Q And it was on that basis and that opinion that the Board proceeded; is that correct?

A Correct, sir.

Q Now, I think we already know from what you have told us, and I think from contemporaneous newspaper accounts, I gather that the Board itself never convened except in public; is that correct?

A That is correct, sir.

Q How were the deliberations of the Board, as you see it, how were they carried out?

A Well, deliberations of the Board were -- and, of course, I can't speak for all of the members; I can just speak for myself, ---

Q Okay.

A --- that's all I could speak for -- was that I

consulted with other members of the Board, the other four of them, informally. I believe all of them visited my office on one occasion or the other, and I visited in the office of, I believe, all of the other members with the exception of the Speaker, and we had various telephone conversations, and the great bulk of the work was done by staff members. My staff, I had two Assistant Attorneys General assigned to it full time, and then the Legislative Council, I don't know how many they had. It seems to me they had two or three, and the Lieutenant-Governor had at least two staff members assigned to that, and all of this work was carried on in that particular manner.

Q You say, then, as I understand it, that you consulted with three out of the four other Board members ---

A I consulted with all of them. I limited it to the Speaker. The Speaker came to see me, I believe, on two occasions. I did not visit his office. In other words, we exchanged visits between offices, and if I misled you, I am sorry. I went to all of them's offices with the exception of the Speaker's Office. I don't recall going there. I might have, but I don't recall it right now.

Q Was there any particular reason why you didn't go to the Speaker's Office?

A No, sir, it just didn't come in handy. In other words, the Speaker was over here when he desired to speak to me or when I desired to speak to him. He always came to my office.

Q I see.

A I talked to him over the telephone.

Q Did you -- were there any studies, articles of either academic or political nature that you took into account in addition to the evidence that you were talking about?

A Oh, yes, sir. We ---

Q Do I make myself clear?

A Yes, sir. As far as the Chavez case was concerned, well, we did Xerox that and presented that to the various members of the -- all of the members of the Board, and the companion cases, I don't recall the style of them, those that came out at the same time, we Xeroxed all of that, and then there was several articles -- I don't recall whether they were Law Review or something to do -- written by legal scholars, that we circulated among the Board.

Q Do you have a way, I guess, of pinpointing which articles you circulated?

A No, sir, I am sorry, I don't. I don't recall that right now, and it seems like to me there was maybe one

or two of those that had been written by people that we undertook to try to -- in other words, this really was more work on my part than it was on theirs, because, in a way, I wore two hats. I was legal counsel for the Commission, as well as Chairman, and when something came in that we felt like was guidelines as far as the law was concerned, we made this available to the other members.

Q Was there a file maintained of correspondence or memoranda passing between you, as Chairman, and other members of the Board?

A No, sir. So far as I know, there was no file made of that.

Q Was that correspondence retained someplace?

A I am just sorry. I can't answer that. The way this office is run, I more or less am administrator, and there are papers on my desk, but all papers that come and go, they go by baskets, and I just can't tell you that. I just don't have any knowledge.

MR. RICHARDS: Sam, is this something that you got into to see whether there is a separate file?

MR. McDANIEL: No, and I have no recollection of any such correspondence back and forth, which does not mean that it was not made. It merely means that it wasn't in my bailiwick to handle.

A Let me say this, when you are talking about correspondence. I did not sit down and write a memo to these people. All I am talking about is articles that were -- in other words, those cases that I talked about, and articles that might be pertinent to the matter. They were just Xeroxed and sent through, and I don't even know that -- if I have a copy of all of them. I am not familiar with that, because -- they could be in this file.

Q (By Mr. Richards) All right. Well, these are the ones you described to us, and then they are essentially matters of court decision or legal comment?

A What I am talking about is matters of law or legal comment, and not evidence, is what I am talking about.

Q And any other in the way, then, of evidence of a kind, that is, studies of a statistical nature, studies of-- studies of a statistical nature?

A Yes, sir. Some of that we did not -- that particular part of it, I did not accumulate that. That was accumulated by the Legislative Council and was circulated to me by the Legislative Council, statistics, census tracts and breakdowns of that sort, and the figures -- in other words, what was the ideal district, you know, ---

Q Uh-huh.

A --- what figure, all of that was furnished by the Legislative Council, but it was, insofar as the mathematics was concerned, it was checked by my staff members, and there was no disagreement on any of that statistical matter, and this is purely statistics. This was presented to us, or to me, just as general evidence by the Legislative Council.

Q Is that essentially just census data; is that correct?

A Mostly census data. In other words, that was the thing, and they did furnish us blank maps, and I think also they presented to us maps of the apportionment as it exists at the present moment -- I mean, as it existed at that particular time, in other words, as the Districts are right now. This was presented to us as information so that we could take and see where the Districts were presently laid out.

Q Did you rely in any measure upon the Districts as had been drawn by the House in the bill that was invalidated by the Supreme Court?

A No, sir. We -- a map was available in this office on that, because we, as you know, tried this matter in the mandamus in the Supreme Court, and we had a map of that, and Mr. Pat Bailey and Mr. Melvin Corley had that map, and I had one or two conversations with them concerning the ---

Q That lawsuit?

A --- apportionment. In other words, I want you to know that was not part of the Commission. This was at the time that the -- let me get this straight so that the record will be understood, so that you will understand.

Q Sure.

A At the time that the Senate hearings were begun, the House had not been declared unconstitutional. So this was presented during that particular time, and they -- I believe prior to the second meeting, the Court had declared its judgment, but no opinion had been filed at the second meeting, and Mr. Corley and Mr. Pat Bailey handled that matter for me, and they showed me the map, but insofar as laying out the new Districts, it had no real bearing on the bill that we wrote.

Q Okay. So, if I can, then, summarize what you have just told us, the map of the original House Bill that was invalidated by the Supreme Court was not relied upon by you in formulating the new Districts?

A No, sir, it was just information that I had, and you asked for all information I had, and I want to give it to you, but we did not rely on that at all.

Q All right, sir. Thank you.

A This was declared invalid, and we just didn't go into

it any further.

Q You treated it as a nullity after that?

A That is correct, sir.

Q All right, sir. Now, turning now to matters that are closer at hand, the Board elected to carve Harris County into single-member districts, and, now, just speaking for yourself as a member of the Board, did you vote for carving Harris County into single-member districts?

A There was no votes, as votes, taken on any of this type of matter. As far as my concurrence in it being into single-member districts, I don't think there was any disagreement among the five members that Harris County would be carved into single-member districts.

Q Can you tell us what factors led you to accept this, or led you to feel that carving Harris County into single-member districts was a reasonable approach?

A Oh, I would say that there were one or two factors involved. Mainly, this was the express wish of practically all of those from Harris County, and, number two, Harris County had a history of being carved up into -- as the bill it is now operating under and the Representatives now elected, was carved into three districts along congressional lines, and

since Harris County had grown, those lines could not be used, and so it had to flow over into neighboring counties, and so the Supreme Court having handed down the opinion which they did, that we had to stay within the county lines, if at all possible, we certainly couldn't use those lines as a basis, and so they were disregarded, and then the lines were drawn as single-member districts.

Q So, two principal factors, I think, then, you say, the express wish of all of those of Harris County; is that correct?

A Well, there may have been one or two letters. I haven't -- you see, this has been some time.

Q Oh, I understand, but you are saying that ---

A But just practically unanimous. We didn't get anybody from Harris County that wanted anything but the single-member districts.

Q And by that you mean citizens, as well as ---

A Citizens, as well as ---

Q --- legislators?

A --- legislators, yes.

Q And then the other factor, I take it from what you said, was the historical fact that Harris County had been previously carved into three districts under the 1965 Apportionment; is that correct?

A Yes, sir, that is correct, sir.
Q Any other factors that you felt impelled you to ---
A Well, Harris County lends itself to easily laying out these districts, in that it has a -- for a metropolitan area, it has a smaller number of people per square mile than the other metropolitan areas, and it is just laid out in a -- well, it is -- the layout of it, it is hard for me to explain, except to say that the County has numerous highways going out, and the population follows those highways, and they have these different communities, and it lays itself out easily to being carved into single-member districts.

MR. EASON: Would you read that last answer, please?

(Said answer was repeated as shown above.

A Maybe you misunderstood. I wasn't making the statement that Harris County didn't have more population than the other counties. Maybe I misled somebody. I was talking about per square mile.
Q (By Mr. Richards) All right, sir. Are there any other factors that you felt moved you toward the decision that Harris County should be cut into single-member districts?

A No, sir, not that I can think of.
Q All right. One of the issues before the Board was the question of whether or not to divide Dallas County either into individual member districts or something less than countywide.
A Yes, sir.
Q Contemporaneous newspaper reports indicated that Lieutenant-Governor Barnes, in fact, proposed that the county be divided at least into three districts, and that you opposed the division and opted for retention of countywide legislative districts. Is that accurate?
A No, sir, that is not accurate.
Q All right, sir. Would you tell me what ---
A The newspapers started that, and I did the best that I could to eliminate it, but sometimes when the newspaper reports get started a certain way, there is nothing you can do about it. I at no time ever made any statement to the Press that I was in favor of single-member districts or multi-member districts up until the time that they were drawn.
Q All right.
A That was -- it was just an erroneous report; as far as what Mr. Barnes might have said, I am not acquainted with that. I couldn't testify to that.

Q All right. Without regard to what was said in the newspapers, did Lieutenant-Governor Barnes approach you at any time during the course of the informal deliberations of the Board and propose that a plan be drawn to divide Dallas County into something other than countywide legislative districts?

A Did he present a plan that ---

Q Yes.

A No, sir.

Q Formally or informally?

A No, sir, I received no plan like that.

Q Did he ever discuss with you the desirability of carving Dallas County into something less than countywide legislative districts?

A Certainly there was discussion went on as to carving Dallas County into single-member districts, and also into one big district with -- running at large. Yes, sir, that was discussed.

Q Was there discussion ever of carving Dallas County into three legislative districts or less than -- something between individual and countywide, as you recall?

A I recall that there was some discussion in the newspaper, and he might have discussed it with me, but I don't recall at the present time. If I had to say

"Yes" or "No," I would have to say no. I don't recall it.

Q You recall no discussion, then, with Governor Barnes, then, or Lieutenant-Governor Barnes, on the question of dividing Dallas County into districts of three, or six districts?

A That was mentioned by some staff members and worked on, and as far as I know, no plan was ever -- I never saw any plan which divided Dallas into three districts. It was just purely talk. There may have been one produced, but I never did see it.

Q You never saw such a plan?

A No, sir, I do not recall one.

Q Did you ever see a plan dividing Dallas County into individual districts?

A No, sir. I heard there was one. I am trusting my memory -- it has been some time, and, as you know, I saw, I guess, fifty or sixty maps during the time this was going on, and I honestly tell you this morning that I do not recall seeing any map drawn of that. I heard there was one, but I do not recall seeing it.

Q All right. So the only maps you ever saw, as far as Dallas County, as you now recall it, were for districtwide or countywide districts; is that correct?

A Yes, sir. At the hearing there was the -- I believe

the people who were -- I don't even recall the name of the witness -- whoever was representing the Republican Party at that, they left those -- the -- Bexar, Tarrant, Dallas and Harris Counties were left as a blank; in other words, just with the number of Representatives in them, and if I recall, that was the evidence in that. Of course, the record would show what it is.

Q Sure.

A I am just testifying as best I can remember what it was.

Q I understand that. Well, you say you do recall discussions, I take it, with other Board members on the question of dividing Dallas County; is that right?

A That is correct.

Q Did you take a position one way or the other on whether Dallas County should be divided into ---

A Not until the map was presented to us by the staff. At that time, well, that was the way Dallas County was drawn.

Q And so you just accepted the proposal of your staff; is that correct?

A I made the statement that I would sign a bill either way.

Q You would have signed a legislative bill, if this is a

bill ---

A Well, excuse me.

Q What we are talking about ---

A In other words, I would have signed a plan either way. I made that statement, but ---

Q Is that an accurate statement?

A Yes, sir. I had no strong feelings and have no strong feelings one way or the other about it. Really, the deciding factor was the testimony of those who testified before the Commission and the people who wrote me letters and those that I talked to. The overwhelming majority of those were for Dallas County having a -- running at large or a multi-member district, either way you want to call it.

Q But you are really saying to us that, as you viewed it, you would have signed a ---

A If the evidence had shown it to be the other way around, I would have signed it the other way.

Q All right.

A In other words, I was -- let me explain that. I began that practice back -- and this is what upset me when I kept reading in the papers how I was voting, because I began the practice when I was a member of the Senate, on important matters I always tried to withhold my judgment on the matter until I received

all of the evidence, and so I did not go into it with a preconceived idea.

Q Well, I appreciate that.

A Yes, sir.

Q But somebody went off to draw a map and came back with a map that has now been signed into law?

A That's correct.

Q And you signed it?

A That is correct, sir.

Q And that map ended up leaving Dallas County running countywide?

A Yes, sir.

Q Now, you told us that if that map had come back to you showing Dallas County cut up into districts, you would have been amenable to that, too; is that correct?

A Well, let me say this: If they had -- let me qualify that. If that would have entailed another factor, and that factor would have been were the single-member districts in harmony with the Supreme Court of Texas decision and the Supreme Court of the United States decision under the Fourteenth Amendment.

Q Are you talking in terms of population deviation, you mean?

A Well, not only population, but the discrimination

between minority groups, and I can't -- when you ask me the question whether I accepted the one with that, I am assuming that it would have been laid out to where there would have been no discrimination between -- in other words, discrimination to a minority group, and I am not talking about just racial; I am talking about a political minority as a -- in other words, it would have had to clear the hurdle in my mind, was it fair.

Q Well, I am kind of puzzled about this map that was presented to you, which you have signed, and which has now become law. Who prepared it? Who actually prepared it?

A It was actually prepared by the staff of Lieutenant-Governor Ben Barnes, and two of my members worked, plus the Legislative Council and ---

Q Can you tell us the people on your staff that ---

A It was Mr. Jones and Mr. Hamilton.

Q Mr. -- I am sorry; what was the second name?

A Hamilton.

Q Hamilton?

A VOICE: Cass Lary was the other one.

A I am sorry; I am sorry. I wonder if we could just take that out?

Q (By Mr. Richards) Sure.

A I get balled up on it. He was on the other matter. Hamilton was on on this. It was Camm Lary and Louis Jones. That is Albert Jones' son.

Q But Camm Lary, is Lary the last name, you mean?

A Yes, Camm Lary.

Q L-a-r-y?

A Yes, sir. He is no longer with my office. He left here, oh, two or three weeks ago. I think he is practicing in Burnet.

Q And I guess the people from Mr. Barnes' staff were Mr. Spellings and -- who else, if you know? Was Mr. Spellings one of them?

A Mr. Spellings was one of them.

Q And Mr. Hooser; would that have been the other?

A Mr. Hooser was the other gentleman; and with the Legislative Council was Mr. Johnson, Mr. Potter and one or two others. I don't recall. I am sorry. When you are working with people like that, I just can't call them, just like I made that mistake awhile ago; I just can't remember.

Q That is perfectly all right. Well, did you give any instructions to your members, to your staff members working on the drawing of the plan with respect to how you wanted them to draw Dallas County?

A No, sir, I don't recall giving any instructions except

the instruction that was given to them to begin with, and that was to follow the law as we thought it was, and we felt like it was, and the percent of deviation to zero, if possible. Of course, that is what we were shooting for, but, of course, it could not be worked out -- at least, we never did see a zero percentage basis.

Q But in terms of the policy decision, whether to divide Dallas County or not to divide Dallas County, you issued no instructions to the staff that was working under your directions; is that correct?

A That's right.

Q Do you have any idea if anyone else on the Board did?

A I didn't mean to imply that it was not discussed. Let's back up on that.

Q All right. Tell us about that.

A It was discussed in their presence, but as far as me giving orders, I certainly did not. That was the question you asked me. As far as someone else doing it, I couldn't answer that.

Q My question was, did you give any instructions to your staff?

A No, sir, I did not give instructions. It was discussed on numerous occasions, but as far as me instructing them one way or the other, I did not

instruct them.

Q Did you ever give them any advice or direction that they should draw up a plan that maintained Dallas County as a countywide legislative district?

A I can't recall exactly about that. Let's -- I mean, go at it -- and I am trying to give it just exactly the way it came about.

Q Of course.

A We didn't start with Dallas County.

Q Quite obviously.

A We started with the, if I remember correctly, watching their progress, they started from East Texas and worked west, if I remember correctly, and there was one district in East Texas that was a thorn, and they worked and worked for a long time, and I was in on the discussions trying to work out Bowie County to where it would not cut the county line, and we finally determined that -- the staff determined, and I agreed with them, because there was no other alternative; it had to be cut, and that was the way they proceeded. The map was being drawn, and I would visit the office, and they would bring partially completed maps over here to us, and the best I can tell you, that was the way it was done.

Q But, of course, there had already been litigation and

contentions being made in the Press by various groups about this issue of whether to carve Dallas County or run it countywide?

A Yes, sir.

Q You obviously knew at that time that this was an area of contention?

A Yes, sir..

Q And I am sure your staff members realized that, too, didn't they?

A Yes, sir.

Q And, of course, Dallas County has been allocated eighteen seats, I believe, in the County, and it doesn't affect the other districts across the State, does it?

A No, sir.

Q All right.

A Maybe I can shorthand this a little bit.

Q I am just trying to find out how someone on your staff came up with a plan that said, "Here, let's run Dallas County countywide." Somebody had to make that decision.

A That was a decision, as far as I was concerned, that was a political decision, and not a mathematical decision at all. That is the reason I wanted you to know that. It was a matter that the Dallas people, the

ones that I attached confidence in, and the numbers, they wanted their Representatives to run at large, and Mrs. Milburn had expressed her intention that -- she was Legislative Chairman, and presented that testimony to us -- that she desired to run at large, and later on I think they repudiated that, but at one time that was their expressed wish, and that is the kind of decision it was.

Q Okay. So the decision was a political decision on whether to run Dallas County countywide or cut it into districts; is that correct?

A I don't mean -- by "political," I don't recall -- I am not trying to imply that it had to do with getting votes or not getting votes. It was a matter of discretion of the Board and would be based on the wishes of the people.

Q Based on the wishes of what people?

A Of Dallas County.

Q You mean the citizens of Dallas County?

A Yes, sir. I mean the citizens. I don't mean the children. I am talking about those who are old enough to vote and those who do express their desires. Of course, whether or not they are registered or not, that was never taken into consideration. In other words, it was just the -- the testimony came in front

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of us, the people who sent me letters and things of that sort. It -- in my opinion, the preponderance of the evidence was for multi-member, running at large districts.

Q Did you then in turn transmit those instructions or advice to your staff people, that you felt that Dallas County should be left intact and run countywide?

A Well, that was the final outcome of it. I do not recall that there was any instruction given to them prior to the presentation of the ---

Q Plan?

A --- plan.

Q Well, did you know before you saw the plan presented there on the last day of hearing that it left Dallas County countywide?

A Yes, sir, I had heard that.

Q But you actually made your decision to sign the plan on the morning of its presentation; is that correct?

A No, sir, I wouldn't say that, because it was presented to us prior to that, and because it had to be run on a computer -- in other words, the plan was run on the computer, and there was some changes made in the other areas, but insofar as Dallas County is concerned, it was -- that's what you are asking me about?

Q Yes.

A The figure 18 was there, and it was at large at the time that I first saw the map, and I believe that Mr. Spellings and Mr. Hooser brought it to my office, and I looked at it, and that was -- I can't recall. It was either twenty-four or forty-eight hours prior to our meeting, and our meeting had to be put off for twenty-four hours on account of the computer had found that ---

Q You had 151 seats?

A That is correct, yes, sir. I might as well get that in the record, because that happened. There is no use getting around it. I mean, there was 151 seats, and that had to be corrected, and instead of meeting on Thursday, we met on Friday.

Q All right.

A But what you are talking about was when I originally saw it, and I think that that was on a Tuesday, if I am not mistaken.

Q And that plan, as you say, was presented by Mr. Hooser and Mr. Spellings, of the Barnes staff; is that correct?

A If I remember correctly,they came in this room here with the plan, and my two gentlemen were with them, and I believe some of my staff people -- I mean, the

seventh floor, what we call the administrative people, were here, too, at that time, and I can't recall exactly who it was, but I think it was Mr. Walker, or somebody else was in the room here at the time.

Q Alfred Walker?

A Alfred Walker, yes, sir, I believe it was.

Q All right. But it was on that occasion that you for the first time knew that the plan left Dallas County running countywide?

A That was the first time that I had seen the plan completely drawn with Dallas County running 18 at large.

Q And you actually didn't know until that time that that was the way the final plan was going to be presented; is that correct?

A Well, it was talked, and my people were reporting back to me, and I visited over there at the Legislative Council, and I never did see any map drawn with Dallas County in single-member districts, if that is what you want to ask me.

Q Well, I just really want you to try to tell me, without thrashing around -- my thrashing around ---

A Yes.

Q --- did you ever make a policy decision or a political decision, however you characterize it, as to whether

Dallas County should or should not be divided, and, if so, when did you make that decision?

A My decision was made at the time it was -- the actual final decision was not made until I affixed my signature to it.

Q All right.

A That was the final decision.

Q Obviously.

A But I would not mislead you in saying that I was not agreeable to the plan prior to that, because it was, as I told you awhile ago, not being repetitious, but I believe it was presented to me on a Tuesday prior to its adoption on Friday. The plan was presented to me, was shown to me, and that was the way it was, and I consented to it at that time.

Q At that time?

A Yes, sir.

Q All right. In advance of that preliminary presentation, had you given any instructions, advice or directions to your members who were functioning along with Mr. Barnes' staff as to your preferences on the division of Dallas County?

A No, sir, I don't recall giving any instructions at all.

Q Or advice as to your preference?

A No, sir. I didn't -- actually, the drawing of the plans is -- the only advice that I could give them is to come back and give you what I did awhile ago, is the Supreme Court decisions and the census tracts and things of that sort. That was the type of guidelines given to the staff.

Q And if Mr. Jones sitting down here had come back on that Tuesday and had presented you with a plan to have Dallas County carved into individual member districts or, for that matter, I guess into three separate districts, you would have been prepared to sign it, as long as you were satisfied that it did not intentionally discriminate; is that correct?

A Yes, sir.

MR. LUNA: Just for the record, ---

MR. RICHARDS: Well, excuse me. Let me get an answer to this, and you can get on the record as you want to.

A I have lost ---

MR. LUNA: Well, my objection is to the question, and the objection is that the question is speculative and hypothetical, asking the General what he might have done had something happened that didn't, in fact, happen, and we object to it as being too speculative and dealing in conjecture, and not a proper

question.

MR. IDAR: I would like to, for the record, clarify Mr. Luna's position here. Is he here representing the State?

MR. LUNA: No, sir.

MR. IDAR: I understand you are representing some of the plaintiffs in Dallas County.

MR. LUNA: You have been grossly misinformed. I represent the Chairman, Roy Orr, the Chairman of the State Democratic Executive Committee.

MR. IDAR: I see. You are representing a defendant?

MR. LUNA: Right.

A I am sorry. You will have to rephrase the question.

Q (By Mr. Richards) I suppose we will never find it again. The -- so you are not able to tell us, are you, General Martin, when, and even by whom, the decision was initially made to leave Dallas County to run at large?

A Well, certainly the decision was made by the three that signed the plan.

Q The plan?

A And I can't recall; it seems like to me it was on the -- well, I don't remember the vote now, but, anyhow, it was at least three, and this is what the

Constitution specified, and as far as the voting was concerned, there was no votes taken except -- I take it back -- the only vote that was taken was taken, and I forgot that particular meeting. I will have to retract that -- go back and state that we did meet in this room one time for the purpose of instituting the -- I mean, taking a defense stand in the Supreme Court as to what the Board wanted to do, and we did -- at that time we took a vote. Now,---

Q But that was ---

A It was approval of the minutes and so on, but as far as taking a vote on the question that you are trying to pursue, there was no vote in holding up the hand and saying "Aye" or anything like that, but there was certainly consultation and a meeting of the minds. There had to be a meeting of the minds before the staff would have gone ahead and presented such a plan.

Q So you are not able to tell us exactly whose original decision it was to leave Dallas County intact; at least, it is your position that you approved it when it was presented to you?

A Yes, sir, that's what I am telling you.

Q That's what you are telling me?

A That was my ---

Q And I believe you have told me that you had no fixed views about the question of whether it should be left countywide or divided into districts, that you would have been receptive to either; is that correct?

A Up until the -- up until the decision was made, that's right.

Q You had an open mind until the decision was made as to leaving Dallas -- on that question; is that correct?

A That's right. If you read the newspaper the other way around, why, ---

Q No, I didn't read the newspaper.

A --- that is in error. The newspaper accounts that I saw, they said I was the swing vote on it. Of course, that didn't prove to be accurate. They were speculating.

Q And, as I understand, the decision was made, as you described it to us, the day before it was officially announced, and that's when you all met in here and the staff presented the plan; is that correct?

A When you say "they," let's specify. Myself, Mr. Hooser, Mr. Spellings, and I believe Mr. Walker, and maybe one or two others. They said that, "This is what we have drawn, and this is agreeable with two other members of the Commission, and would you be

willing to sign this?" I said, 'Certainly, I will be willing to sign it."

Q All right.

A After my two gentlemen who represented me have done all of the checking and it passes the computer test, which it did not do, but it was after that -- in other words, -- but as far as the question you are talking about, the basic Dallas County question, the passing the computer test had no relation to it, but I wanted you to understand that was the subject that my decision was -- that was what it was subject to.

Q And that plan as you have described it was presented to you essentially by Mr. Spellings; is that correct, with other people participating?

A Well, let's put it this way, so you will understand exactly how it was done. I am doing the best I can to try to explain exactly.

Q Surely.

A I was busy in here, and I came into the room, and the map was on the table here, and so far as presenting it, I don't know if anybody pointed out anything. They asked me to look over it, and I spent, I would say, probably thirty or forty minutes going over the details of the map, and after I determined it -- let me put it this way: If I had drawn the map myself, it

would not have been exactly as it was laid in front of me, but on the other hand, no other member would have been -- I mean, that's what you get when you get more than one person. One person can draw a map to suit himself, I hope, but when you get two or three, and the Constitution calls for three, the variations that I didn't particularly care for personally were of such a minor nature that I didn't -- in other words, I thought it was best for the State that I go ahead and sign the plan as it was.

Q And I take it one of the variations that you did not quarrel with, or one of the aspects you did not quarrel with was Dallas County?

A That is correct, sir.

Q And you told us, I think, that your acceptance of the Dallas County at large plan was based upon what you considered to be the wishes of the people of Dallas County; is that correct?

A That is correct, sir.

Q And that was based in turn upon the communications you had received from Dallas County, is that correct, and the testimony before the Board?

A The testimony before the Board and the communications received and the fourteen years' experience I had had in the Legislature dealing with Dallas County. In

other words, Dallas County is next to Hill County, and I wouldn't want to tell you that I started out with just no knowledge at all of Dallas County, because it has always been one of my -- in other words, it is the closest county to us, and that's where we go to shop, and I guess I know more about Dallas County than I do any other county in the State.

Q Well, now, actually, you have to go through Ellis County, don't you, to get to Dallas County?

A That's right. I was thinking about my District. I represented Ellis County so many years, I felt like it was -- in other words, it is the county we go to, and I am familiar with Dallas County pretty well.

Q Actually, inasmuch as I grew up in McLennan County, I suppose there are some Hill County people who still go to Waco to shop, even though Dallas is much more attractive.

A Well, that is one of those things that the dividing line is Hillsboro, and some of them do go there, but -- those who live in Hillsboro go both ways, but those who live north of Hillsboro all go to Dallas, ---

Q All right, sir.

A --- and some few go to Fort Worth.

Q Was there any discussion during the Board sessions about the question of whether to divide Tarrant County

or Bexar County into something less than countrywide districts?

A No, sir, I -- in other words, that was -- the evidence that we received from Tarrant County was that -- well, it was almost unanimous. Now, there may have been -- I haven't looked through all of these papers here -- there may have been one or two letters that came in here from somebody, or a few people who wanted it divided into other districts, but there was no -- well, there was just very, very little evidence at all that I can recall from Tarrant County. The fact of the business, it seemed to be pretty unanimous that that's what they wanted.

Q What about Bexar County?

A We had the same situation, without repeating all of that. It was about the same situation, except that on the last day of our hearings that we had in the Senate, that particular hearing -- I am talking about that hearing we had in the Senate Chamber or in the Senate Committee Room, I believe Mr. Alanis arrived late, and the meeting was just about ready to be adjourned, and he arrived and said that he would testify that he would like to see it into single-member districts. We may have received some letters or telegrams from there, but I don't -- I can't recall

it.

Q If I were to sum up what you have told us, then, about your role and the decision to run Dallas County at large, I assume it is, again -- you felt it to be established in the record that this was the wishes of the people of Dallas County; is that correct?

A Plus the fact that I felt it was fair to all groups. That was the test that I -- in other words, I put the same test to run at large that I would -- as I gave it to you awhile ago, to run in single-member districts. In other words, was it fair to the racial minorities and was it fair to the political minorities, and I don't know whether you could say that the political minority of Dallas County is -- I don't know exactly what that is, but, in other words, if there is such as that, there is a thing, because Dallas County is a switch county, as you know.

Q What sort of soundings did you take to determine whether or not it was fair to the racial minorities of Dallas County?

A Well, all I had to do was -- we did look at the election returns in the last ten years, and that's the pattern of the voting up there, and they have elected racial minorities up there under at large, and I believe the Republicans swept the County except for one

Representative, oh, I don't remember, four to six years ago, about six years ago, if I am not mistaken.

Q All right. You looked at the election returns for the last ten years?

A Well, yes, sir.

Q Did you go back any further than ten years?

A Well, as far as actually looking at the records, I did not. I have been acquainted with Dallas County. Like I say, I ran in that area, and, of course, State politics has been my business for twenty-four years, and certainly I would have some knowledge of how Dallas County votes.

Q Based, then, I take it, upon your service in the Senate, your proximity to Dallas County as a resident of Hill County and the election returns of past years, these persuaded you that ---

A And the -- not to interrupt you -- and the evidence that was presented to the Board. That was -- you are leaving out one of the main things.

Q All right. And the evidence presented to the Board persuaded you that a countywide plan in Dallas County was fair to racial minorities; is that correct -- basically to the Negro population?

A We would say to all minorities, is the way I would put it.

Q Well, but with specific reference to the Negro minority in Dallas County, you were persuaded on the basis of what we have just recited that it was fair to that minority; is that correct?

A That is my opinion. They have elected Blacks from Dallas County several times, and those who have come down here have been high-class gentlemen.

Q Yes, they have.

A They are real fine people.

Q Well, were you aware, I take it, inasmuch as the evidence was before the Commission that the elected Black officials of Dallas County felt that countywide districting was not fair to them, not fair to the Black minority?

A Well, I couldn't -- in other words, you are stating a "beat your wife" type of question. I can't -- I mean, I can't answer that question exactly.

MR. STEELE: If I might interject, why don't we just ask the question directly, or maybe you are coming to it, and maybe not. Mr. Martin, I wonder if---

A I don't mind taking them one at a time, but I don't like to take them in cosmo. I am a lawyer, myself, and I believe that is a little bit unfair, to take them in cosmo.

MR. RICHARDS: We will be talking with

General Martin all morning long, I suppose, and I am sure I am going to foul up some questions, and I hope you will pick them up.

Q All right. Were you aware that the one elected legislator from Dallas County, Reverend Zan Holmes, as well as the other two elected Black officials in Dallas County, George Allen and Dr. Conrad, were opposed to countywide districting?

A I got a telegram from Mr. Zan Holmes, I recall. I don't recall getting a telegram from the other two. I do recall getting a telegram from Mr. Zan Holmes, and he said that he was opposed to it, yes, sir.

Q And you had testimony, did you not, from at least one Black citizen of Dallas County before the Board that they felt that the countywide districting scheme resulted in discrimination against Black minorities?

A Yes, sir. Of course, the record would speak for itself.

Q Yes, but you recall ---

A But if I recall right now, there was such a man. I do not recall his name.

Q What was it that caused you to reject this view of the Black citizens of Dallas County and opt for a view that they were being fairly treated?

A I don't -- there was an assumption you were making

awhile ago. I don't assume that is necessarily true. The voting pattern is one thing, but whether it is -- whether or not the plan is fair is another thing, and they are entirely different questions insofar as it being fair. I took them back to the same conclusion, that I felt that it was fair to the racial minorities to run at large.

Q Now, you said you were contacted by various persons from Dallas County indicating their wishes that Dallas County continue to be run at large. Can you tell us who contacted you in addition to that that appears in the record you have furnished, in addition to those?

A I just couldn't give you the names of all of them at all. Some of them, there are letters in the file, and, to be honest with you, I couldn't give you their names right at the present time. It is in the file, but ---

Q Do you keep ---

A I don't know who all wrote me, but, then, I received telephone calls from quite a few of the Representatives up there, and some of the businessmen and others up there concerning that, and, of course, we had the testimony in front of the Commission. I believe Mr. Luna testified.

Q Then you say telephone calls from Representatives and

businessmen. Can you tell me the names of the Representatives or businessmen, or any of them that contacted you by phone?

A I confined myself to phone there. I am sorry that I did that. It is -- my memory is just not that good. Let me say this: I received, either personally -- in other words, either stopped me and talked to me or sent me word, or called me, and I really don't recall right offhand who it was that called me on the thing. All I could say is that the -- some of the members of the -- Representatives up there, Members of the House, contacted me, but I want you to understand that I did not -- this was just one small factor in the matter -- I mean, the wishes of the legislators from that County were taken into consideration, but I wouldn't take that as paramount at all.

Q They were actually a small factor, the wishes ---

A Yes, sir, as far as I am concerned, the Representatives -- let me, so that it will correct the record, if you will let me explain.

Q Sure. I want you to.

A This, really -- the Representatives up there really would be probably better-qualified to do the re-apportionment than I was, but the Constitution placed

the burden on me, and -- but after it was placed on me, then I felt that I should listen to the Representatives, but I would not attach paramount importance as to what their desires were, because each one of them that I recall that spoke to me had a direct interest in how the bill would be drawn to help their political chances, and that was -- I would have to balance that in my mind, as versus -- for instance, I was in the Senate for a long time, and I found out a long time ago that a form letter or someone who had an axe to grind, it didn't have as much impact on me as hearing from people who did not.

Q All right, sir. So, then, there was really -- it was the opinions of others that weighed more heavily on you in this decision other than legislators; is that correct?

A Yes, sir.

Q And can you give us -- I know Mr. Luna's opinion was presented to you, at least in testimony. Did Mr. Luna call or write to you further on the matter?

A Mr. Luna called me on one occasion concerning the time of his testimony. In other words, he was requesting to be heard, and if I had any other conversations with Mr. Luna other than that, I don't recall it, except I did have personal greetings. We

greeted each other in front of the Hearing Room the day that he testified, and I don't recall having any other conversation with Mr. Luna.

Q All right. Then, I take it there were communications, then, in addition to those from Mr. Luna and from legislators, that weighed more heavily in your mind with respect to the wishes of Dallas County, and I am curious if you can give us ---

A Well, the newspapers had some effect. I wouldn't just -- persons and newspapers, the editorial staffs, the newspapers, they usually have some bearing on the matter.

Q Anything other than that, now?

A Well, I could sit here and talk about the things a long time.

Q Sure.

A But it was just -- it was the -- trying to go back and trying to reconstruct the workings of my mind is almost impossible. I don't want to be -- I am not trying to be evasive. I am doing the best I can to answer you, but I just can't tell you all of those things, because they were -- I was getting something like -- stacking up calls something like twenty-five or thirty a day that I could not take, and I would receive word from somebody that they were trying to

call me, and that they wanted to give me this information, but it was a real harried thing, but in order to give you the inner workings of my mind at that time, I cannot do it.

Q All right. Do you keep a log, a telephone log, that will reflect the phone calls, for example, that you receive on a day-to-day basis?

A No, sir, I do not.

Q Or does your secretary?

A No, sir.

Q You indicated that you received calls from Dallas businessmen on the subject. Can you tell us any single businessman from Dallas that you now recall that called you?

A Yes, sir, I can name a few of them. They may not -- I mean ---

Q Sure.

A It may not be exclusive, but I received a call from Mr. George Cowden, who I have confidence in. He is a businessman there in Dallas.

Q He used to be from Waco?

A He was from Waco, and he worked in this office, and I talked to George a good long while about it. He is a citizen up there.

Q Uh-huh.

A And I -- now, you excluded legislators, didn't you?
Q Yes.
A Because I was fixing to tell you about Jimbo Atwell.
Q I am sure you have heard from Jimbo.
A I am sorry, Harry, I balled you up there.
Q We don't want to tell Jimbo stories. We will be here all week.
A There are some of the people, like I say, in the life insurance business, some in the dry goods business. Mr. Joe -- Mr. Chandler, who used to be with Sanger Brothers; I recall him visiting with me about the matter. Mr. -- well, let's see. There was lawyers -- I didn't mention them awhile ago. I had several lawyers to call me, and I ---
Q Do you remember any of them?
A The former -- one of the former Chairmen up there, and I can't think of his name right now.
Q Ed Gregg?
A Yes, sir, I believe it was. And, let's see ---
Q Joe Rich?
A Joe Rich. Yes, you are right. I am sorry. I can't remember these names. You can.
Q That's all right.
A I am just not good at remembering names,but they were-- I would say probably half the calls of people who

contacted me outside of legislators were attorneys, and certainly most of them were knowledgeable people in the workings of the politics in Dallas County.

Q Do any other names come to mind immediately?

A Not at the present time. I am sorry. My mind is blank on that.

Q By the way, do you keep a log here of visitors?

A Yes, sir, we have one out in front.

Q So, in looking back at that log, would there be anybody that came to see you in person that you ---

A Let me say this: Sometimes they sign that, and sometimes they don't. My girl has instructions to ask them to sign it, because the law requires it, but I would say that over half of those that come do not sign it, and there is not much that I -- I mean, I don't know whether they sign it or not sign it, but if you want to look at that log, you are certainly welcome to look at it. We have to file a copy of that log with the Secretary of State, and you will find it -- I don't think it has been filed yet, because I think we file it once a year, but you are certainly welcome to the log. What I am saying, again, I am saying -- I am not saying that that is exclusive, because there is a world of personal visitors that just don't feel like -- they come to see me on

matters of the Attorney General, and they just don't sign it at all. They come right on in.

Q Now, let me see, General Martin, if I can summarize a couple of things that we have done. The decision with respect to Harris County, I believe you have told us, was essentially twofold. You felt it would be the wishes of the people of Harris County, and there was historical precedent in the light of the way it was previously divided; is that correct?

A Yes, sir, that is two of the main factors.

Q Well, and you gave us one third minor factor. You said it was easy to divide?

A Yes, sir.

Q Were there any other factors other than that?

A No, right offhand I can't recall any other factors.

Q All right.

A There may have been. I just do not recall. The Harris County situation is entirely different from the Dallas County situation.

Q All right, sir. And if you think of any other factors during the course of the deposition, I hope you will let us know, if they come to you.

A All right, sir.

Q And on Dallas County, I believe you told us it was essentially a decision based upon what you deemed to

be the wishes of the people of Dallas County; is that correct?

A Yes, sir.

Q Any other factors other than that?

A Well, we would have to go back over all of the testimony we have had.

Q Yes.

A And to summarize that as the wishes of the people of Dallas County ---

Q Very well. As defined in your ---

A In other words, I mean, the only thing I can tell you is I don't see that you can summarize it in one sentence.

Q All right.

A It was all of the factors that I talked to you about.

Q In your testimony that you have already given?

A Yes, sir.

Q All right, sir.

A That's what I'm talking about.

Q Well, are you telling us that there was some physical reason why Dallas County couldn't be divided? I mean, there was no physical reason, was there?

A Well, I can't answer that at all. I am sorry. I cannot answer that.

Q You are not aware of any?

A I am not aware of it. I mean, I am not aware one way

or the other about the matter. I did not undertake to divide it into single-member districts, and, as I say, I just couldn't answer that question.

Q Insofar as you know, it could have been done physically?

A I just can't answer that.

Q All right, sir.

A Let me explain that, if you don't mind.

Q Sure.

A The census tracts, when they laid them out in Washington, they had no reference to legislative districts, and they run from zero -- some census tracts have no people at all, up to as high as 15,000 people, and this is a difficult situation, a lot more difficult situation than at first blush. Most people think that all you have got to do is just take -- start in and just move these just like taking a ruler and pushing it over here, and put this many over here and put this many over here. It just doesn't work that way, because you are working with census tracts, and they are odd-shaped; they are not square; they are not round; they are odd-shaped, and this is a difficult situation. Like I say, it is more a mathematician-type operation and analytical-type operation than it is anything else.

Q I am sure either you or your staff took into account judicial decisions in making this decision?

A That was the main thing that -- the main part that I had in the -- outside of being Chairman -- was to do my best to try to abide by the Courts' rulings. As you know, we were under a mandate from the Supreme Court of Texas, ---

Q Sure.

A --- and so we tried to abide by that mandate. No one filed an action in the Supreme Court saying we had disobeyed their mandate.

Q I take it you took into account,too, the Court's decision in the Kilgarlin case that was the earlier case?

A Yes, sir. I happened to be a party to that case.

Q You were a party to that case?

A Yes, sir.

Q You were actually a party defendant to that case?

A Yes, sir.' It is Kilgarlin versus Martin, and it was tried, I believe, in 1965.

Q Now, the newspapers widely reported that you received considerable pressure from conservative business leaders in Dallas County to retain the countywide system. Can you ---

A The only thing I can say is, I don't know where they

got that information. I received a cross-section of the business personnel and legal personnel, and I thought a fair representation in the cross-section of just ordinary citizens.

Q Well, have you told us the names of all of the persons, now, that you recall who reflect that cross-section?

A Oh, no. I didn't -- as I told you, all I could bring to my mind at the present time without anything to refresh it, and I am sitting here -- so the record will show it, I am sitting here with nothing to refresh my memory with at all.

Q Yes. I am sure the record ---

A I can't remember at the present time. I know -- I remember another one, since you mentioned it. It was this -- I can't remember whether he was a Representative or the State Chairman at the present time. Mr. Orr called me down there, and I received several calls from Garland and from Grand Prairie, and I know we got several calls from Irving and Richardson that was -- if I remember it correctly, I received some calls one way and some of them the other way. When it first started out, they wanted them at large, and then at the end, they were -- some of them were convinced that they wanted the single

districts.

Q Did you make any effort to record these calls or make notes of them?

A No, sir, I certainly did not. I am sorry that I didn't at the present time, but I didn't anticipate the litigation, even though -- I mean, the detail that we have at the present time. Otherwise, I could, but I don't make a practice of that.

Q And so when you indicated a moment ago that you were not testifying from any notes, which is accurate, ---

A That's right.

Q --- I take it there are no notes that you have available to you to refresh you on this?

A The only thing I could do would be to go back to these letters and go through there, and I am sure some of them said, "I wrote you, I called you yesterday," and so forth and so on, but when you are getting four or five hundred letters a day in this office, like comes through, it is difficult for me to remember everybody.

Q Okay, sir. I assume that you were aware of the view that carving of Dallas County into smaller districts would tend to increase the number of Black Representatives from Dallas; you have heard this view expressed, have you not?

A Yes, sir, but I am not certain --I mean, in my opinion, the Blacks will receive a proportionate amount of representation at the next election, with this one proviso: The Blacks tend to vote Liberal Democrat, and this is their ideology, and naturally they will not -- probably will not fare as well as they would if they voted as a swing vote. They may vote as a swing vote, and what we are talking about now is highly speculative as to what they may do in the future, but you asked me what my feeling was, and it is that they were treated fairly and will receive their proportionate share of representation, the same as Harris County will.

Q But did you -- all right. I understand, I think, your answer.

A Yes, sir.

Q But putting it slightly different, do you quarrel with what was the assumption at the time, that single-member districts would produce more Black legislators from Dallas County?

A I just couldn't answer that, as to whether it will or will not. That is speculative, but I will say this: I would not have signed it if I had not felt that the Blacks would get somewhere close to the percentage that they -- taking into consideration the fact that they

have heretofore not been a swing vote, and if they were a swing vote, they would probably receive more than that, but this is something that is the facts of life about the matter, and there is some indication that they will be a swing vote the next time, and that had started earlier in the year, and I would think that that probably may come to fruition.

Q In looking at the question of whether, you know, Blacks were being fairly represented in Dallas County by the system that exists, did you consider past history, as well as, I take it, projecting into the future? Did you consider your own experience as a legislator and what you knew to be the case in terms of the existing representation?

A I am sorry. I didn't -- you have got me ---

Q Well, I am sorry. You said that ---

A I am getting a little bit tired, and I didn't catch your question. You will have to rephrase it.

Q In reaching the decision that satisfied you that the countywide scheme was fair to the Black minority, did you take into account what you knew of Dallas County from your service in the Senate and your period as Secretary of State and your period as Attorney General in terms of how that past representation had affected the interests of the Black minority?

A Well, yes, sir. Of course, there were very few Blacks offered for office back when I was in the State Senate. I don't recall -- I mean, in most years none offered for office, and, of course, you can't compare that with what it is today, but what we are talking about is what the situation is today, and qualified Blacks are offering for office, and in my humble opinion, the voters of Dallas County will vote for the man quicker than any other County in the State. In other words, if you want to get down into the political arena, I would say that over fifty of the voters of Dallas County are swing voters. They vote Democratic, and they will vote Republican, and they will vote for a certain man. In other words, they have proved that in the past. That is just Dallas County people are independent-type voters.

Q Are you saying that Dallas is a special case in the State, you mean?

A No; I just think that -- the fact of the business is that the majority of, say, close to the -- close to half of the voters in Texas are of that class at the present time. They are independent voters, and the great bulk of the voters in the metropolitan areas will vote for a person that is qualified, regardless of whether he is Black or White, or any other race.

That is my opinion at the present time, sir.

Q Did you take into account at all the cost that might be required of a person to make a legislative race in Dallas County in the primary?

A No, sir, I don't recall us ever, or that ever being talked about or discussed at all. I am certain it would be foolish of me to tell you that I am not well-acquainted with the fact that it costs lots of money to run for office, because I happened to run for office myself, and it does cost lots of money, yes, sir.

Q Did you consider the possibility that the White majority of Dallas County might be hostile toward the interests of the Black Community?

A No, sir, I don't consider that to be a fact at all.

Q You felt that there was no support for that position; is that correct?

A No, sir. I don't take that position at all. In other words, as I stated before, I think that the citizens of Dallas County -- for instance, we had one group that came before us, and they were complaining because they never had anybody elected from their area. Well, they never had offered any candidate, but based on what we have seen in the Legislature, there would be qualified Blacks offer, and I don't

think that there is enough racial overtone in Dallas County to swing an election one way every time. I wouldn't go with that at all.

Q Do you think there is any racial overtone in Dallas County?

A There is always a little bit somewhere. That is one of the facts of life we have, but it is a very minor factor, as far as I am concerned, in the election of their Representatives.

Q Has that always been the case?

A Sir?

Q Has that always been the case, as far as you know?

A Well, I can't answer that. I would be speculating, because, like I say, back years ago no Blacks offered for office up there. As soon as they started offering, there were some elected. I would say, also, that there was -- well, that's about the best I can answer it. I can't answer it any better than that.

Q Well, did you take into account at all the fact that previous Dallas County delegations that served in the Texas Legislature had voted for laws that were hostile toward the Black interests?

A Well, I don't recall any vote like that in the last ten years at all, and so I -- so those who come down here from Dallas County, which is an entirely different

question you asked me now, as to the views of those who represent Dallas County at the present time, I don't consider any of them racists at all.

Q Did you ---

A I mean, I am just saying that is the way I consider them.

Q Well, did you consider that at all? I mean, is this something you examined to try to help satisfy yourself, or did you think this was not material?

A Oh, yes, I examined that. As I said, that's one of the things I did. I tried to examine this thing from the protection of the minorities, and that was my conclusion about the matter, and I still feel that way.

Q Did your examination carry back as far as 1957?

A No, I didn't go back into the -- in other words, I don't consider the 'forties and 'fifties as relevant to the present situation, and there has been a completely different -- as I stated awhile ago, and I am repeating again, there have been different things that have come about. Number one, the Blacks are better educated today than they were then. There were very few college graduates at that time. They were not offering for office, and there was a completely different atmosphere at that particular time than what

we have today in Texas, but I hasten to say that, so far as I know, there has been no one deprived of a vote in Texas for, I would say, oh, thirty-five years, since the Grimes County case, on account of his race, that has been brought to my attention. That case -- maybe I might -- I thought it was in the 'thirties, but ---

Q I think it actually goes into the late 'forties, if you are talking about the last of the Jaybird primary cases.

A Yes, sir. In other words, that is the last time that I recall anything, and that was an isolated case, and the counties that I am acquainted with -- and I ran from ten counties up there -- there was -- I know of no instances in which anyone was deprived of their vote on account of their color.

Q Of course, you know that they were deprived of the right, of course, to attend White schools on account of their color?

A Up until 1954, that was the law and the Constitution of the State of Texas. That was overturned, of course, in the Brown case, and I believe it was in May of '54.

Q Then, you are aware, I assume, that still is being litigated in Dallas County today in terms of the equal protection of the Black minority children's right

to attend schools?

A I read the Dallas News and the Times Herald, and there seems to be quite a bit of litigation going on in regard to that. The thrust of it seems to be based on the busing, the best I could give you on that. That seems to be the argument at the present time, of busing school children.

Q So the issue is still with us, as you see it?

A Yes, sir; and I think that until -- it will be with us -- that particular issue will be with us for a little while longer. I think it will resolve itself. In my opinion, it will be resolved in the next twelve months. I am not saying that the litigants, that anything that is emotional, their feelings just don't cease overnight, but, on the other hand, the great bulk of the Dallas County citizens are not vitally interested in that. They are a group of people who feel one way or the other on that particular issue.

Q You know Bo Byers, don't you, I assume?

A I have been knowing Mr. Byers -- are you talking about the reporter for the Houston Chronicle?

Q Yes.

A I have been knowing him for, oh, I would say fifteen years. He came here, and then he left, and then he came back. He is the Chief of the Bureau of the

Houston Chronicle.

Q You know him as a long-time political observer and political reporter?

A As far as the elections are concerned, he makes a survey prior to elections and, as predictors go, he is probably one of the best predictors of who is going to win an election that I know of in the State. Yes, sir, I would agree with that.

Q To quote Bo Byers' column of October 10, 1971, and get your response to it, if I may -- this is a quotation: "Conservative Democrats have dominated elections of State Representatives in those three big city counties." And that is referring to San Antonio, Dallas and Fort Worth. Continuing the quote: "Single-member districts undoubtedly would lead to election of more Liberal Democrats, Republicans, Blacks, and Mexican-Americans in those counties." Would you consider that to be an accurate appraisal of the political reality of those three counties?

A Well, I would not consider that as being one hundred per cent accurate. As I stated awhile ago, I think, as far as -- I think if you would take Mr. Byers and you let him survey the Governor's race or the United States Senate race, he comes up with a pretty good answer as to who is going to win, but as to his

expertise on Dallas County, I couldn't testify to that. I don't think he is an expert on the inner workings of Dallas County at all.

Q So you would not accept that as an accurate appraisal?

A I would take his word for Harris County, but as far as Dallas County is concerned, the Houston Chronicle does not go into there, and the only time he ever goes to Dallas County that I know of is once ever two years, to make this survey, unless he goes up there on some other business, but the only time he ever tests the sentiment is during that time, and, as far as I know, he hasn't been there lately.

Q Okay. You say you read the Dallas Times Herald?

A Yes, sir, I -- they don't throw the Dallas Times Herald here, so I don't get it as often as I get the Dallas Morning News. The Dallas Morning News is thrown here, and I read both of the papers when I get a chance. Sometimes I go for several days, and I don't get a chance to read the papers.

Q I have a quote here from the Associate Editor of the Dallas Times Herald, who I think is Mr. Burt Holmes.

A I have met Mr. Holmes. I am not acquainted with him, sir.

Q Of October 3, 1971, commenting on the question of the division of Dallas County: "Hiding somewhere in

the recesses of memory is the history of 1962, when a Republican surge brought victory to every GOP candidate running in Dallas County, including every legislative seat contested. The chance of a similar sweep in future years does not appear to weigh heavily on the minds of Dallas Demo leaders. One told me last week he would prefer the big gamble on total victory rather than the almost certain loss of some seats to Republicans or Liberals under a single-member district plan."

Did anybody ever express that view to you during the course of these matters?

A I am sorry. If you want to introduce that in evidence, you can. I don't ---

Q No. Did anybody ever express that view to you at all at any time during the course of your ---

A I may have read that, but I don't recall that.

Q Did any of the people who talked to you about the Dallas County issue ever express that opinion to you?

A I beg your pardon, but it is such a long statement that I don't recall anybody just coming out with exactly what you said there.

Q You heard some comment similar to that?

A Sir?

Q You did hear some comment similar to that?

A I couldn't tell you. I have completely forgotten all of what you put in there, and I just know you read from the newspaper there, and you asked me about it, and the only thing I can say is that that is what this Mr. Bert Holmes said. I don't know the gentleman. I couldn't judge it. I do know the other -- in other words, the editorial writers, some of the other editorial writers, and particularly the managers of the paper. I am well-acquainted with them. I am not acquainted with Mr. Holmes, and I couldn't offer any comment on that.

Q That's all I have, thank you, at this time.

(Thereupon, the proceedings were recessed at 11:55 o'clock, a.m. until 12:05 p.m., at which time the proceedings were resumed as follows:

CROSS EXAMINATION

Questions by Mr. Idar:

Q Mr. Martin, I am here representing the Mexican-American Intervenors in the Bagsetar case.

A I am sorry. You will have to give that again.

Q I am here representing the Mexican-American Intervenors in the Bagsetar case. That is the case filed in Tyler. My name is Idar, I-d-a-r. I am going to be particularly

concerned with the House, of course, and with the Mexican-American as a minority group in these proceedings here. I gather from your testimony earlier today that -- of course, I knew that also, personally, that you had rather extensive experience in Texas politics, as a State Senator for a considerable length of time, Secretary of State, and now Attorney General. You are, of course, aware of the fact that in Texas both the Blacks and the Mexican-Americans do constitute sizeable minority groups?

A Yes, sir. If I remember correctly, I believe your -- well, I am just trying to recall the last census, I believe the Mexican-Americans was around, a little over twenty per cent, if I am not mistaken.

Q Yes, and I think the Blacks -- I may stand corrected -- probably eighteen, fifteen, maybe twelve per cent?

A No, sir, it will run around between eleven and twelve per cent, I believe, if I am not mistaken.

Q Now, you have traveled extensively about the State, particularly into the bigger cities and counties?

A Yes, sir. It is necessary to go that way when you run for office.

Q And in your experience in politics, have you gathered through your experience in politics that in our major cities these two minority groups have a tendency to

concentrate in certain areas of those cities?

A That has been true in the past.

Q For example, in Bexar County, San Antonio, you would have your Mexican-American mostly concentrated on the west and south sides of the city there?

A Yes. Of course, I don't consider them what you call a real minority in Bexar County.

Q Well, you might be right there. I understand we are getting pretty close to being ---

A Well, I mean, it is close to fifty-fifty now.

Q Yes, sir.

A In other words, the Census Bureau, we would not -- we would just have to use our own judgment, because the Census Bureau did not break down to us information as to Latin-American surnames. We didn't have that information.

Q That is what I was trying to ask you, whether or not you were able to gather any census tract data as to the Mexican-Americans in the preparation of the plan that was adopted by the Board?

A To the best of my memory, we did not have a complete on that. We might have had some areas, but across the board in Texas, to the best of my memory, we did not have the Latin-American surnames as based in the -- one of the difficulties with the census tracts was that

the census tracts would give you, say, in the Blacks, would give you, where they ran over fifty per cent, the ones that we had, if they constituted ten or fifteen or even forty-nine per cent, we had a difficult time with that, and we had to use a whole lot of outside information in order to pick this up.

Q You are talking about the Blacks?

A This is Blacks. We are talking about the census tracts and the Blacks. Now, the Latin-American surnames, I am sorry, I just don't have that much knowledge. I do have a knowledge of Bexar County, and I would agree with you that most of the ones who have Spanish surnames are in the south and in the west parts of Bexar County.

Q Yes, but getting to the Blacks for just a second, you indicated that even as to the Blacks, when they were a substantial minority in a given area or a census tract of, say, ten or fifteen per cent, that in those cases you sought or made an effort to see if there was any other source of information; is that what you stated just now?

A Oh, yes, we tried to get what information ---

Q All right.

A --- what information we could. That was one of the things we tried to do in the lawsuit.

Q You are aware that we did have 1960 census figures, as far as the Mexican-American, that would give you a fairly good idea as to how they broke down into different census tract areas, where they were concentrated at the time of that census?

A No, sir, I don't think the 1960 census was ever presented to me.

Q You don't know whether the staff that worked on these plans had that information available?

A They had the 1970 census, but not the 1960. I don't recall that, sir.

Q You are not aware that you did have this information available for the 1960 census, that a special study was made of the Spanish-speaking population in the five southwestern states in 1960, and that data was available?

A If it was available, I don't recall it this morning. I am not saying it wasn't available. I just don't -- I do not recall it this morning. There were so many factors that went into this, I can't get them all, but, to be honest with you, I do not recall that at the present moment.

Q Therefore, you wouldn't recall whether or not any effort was made to try to update that information so that you could determine that the concentration of this

particular group might be in the different counties where they formed a sizeable proportion of the population?

A You would have to ask Mr. Bob Johnson and the Legislative Council. They did that type work. I did not. They did present to us -- Mr. Johnson -- and you will have a chance to examine him this afternoon -- did present to us some updating of some information, and where it came from, I am sorry, I did not know until you mentioned it.

Q As a politician, you might say, with the tremendous amount of experience that you have in Texas politics and as an attorney, and Attorney General of the State of Texas, you, of course, are aware that one of the crucial issues involving redistricting is whether or not the plan that was arrived at would have a tendency to dilute or cancel the votes of minority groups?

A That is one of the tenets of the Chaves case. The way I understand the law, that was one of our duties.

Q It is my understanding from your testimony this morning that you did give your staff copies of court decisions and Law Review articles and other material that related to the legal aspects of redistricting?

A Yes, sir.

Q But do you recall at any particular time whether you

personally instructed the two people, the two Assistant Attorneys General that were working with the other people who were working on the plan, did you make any kind of an effort to warn them specifically as to the situation, both of the Blacks and of the Mexican-Americans, and how they might be affected by the ultimate plan that might be arrived at?

A Oh, yes, sir, that would be one of the main things that we instructed them to watch for.

Q Did you specifically discuss Bexar County with them?

A I am sorry, I cannot recall whether we discussed it specifically or not. We took the map here on two or three occasions and went through it county by county, and whether or not -- I am sure we did, but I just don't recall it, and I am sure that -- all I can say is, I am sure we did, but I don't recall exactly at this particular moment what day it was or anything.

Q Do you know whether you specifically discussed Dallas County?

A Yes, sir, I do recall visiting and talking to the various and sundry ones about there the -- concerning the percentages in the census tracts that might be located in this, yes, sir.

Q Was that as regards the Black or the Mexican-American, or both?

A Both, sir.
Q As to both?
A Yes, sir.
Q Did you -- I think you indicated this morning that the plan that was finally adopted by the Board was shown to you a day or two before the Board actually met to adopt the plan?
A Yes, sir.
Q And that prior to that, there was some kind of a meeting of the minds among the members of the Board as to whether or not you were going to go for single-member districts or multi-member districts in the bigger counties. I believe you indicated there was a meeting of the minds sometime prior thereto?
A Well, that was a -- in other words, the staff over there brought the plan in here, and that was the way it was written, and Mr. Spellings told me that he had two to sign this particular plan when it was presented to me.
MR. CUNNINGHAM: I didn't understand you.
A I said he told me at the time that there were two other members of the Board who were willing to sign this particular plan, and that I was -- that was presented to me, and I consented to sign it, too, and I am trying to repeat my earlier testimony. If I am

not mistaken, that was sometime on Tuesday -- it could have been Wednesday. I think it was on Tuesday before we actually passed or signed it on Friday.

Q Who were the two members of the Board that he told you were ready to approve or willing to approve the plan?

A Mr. Bennet and Mr. Bob Calvert, Robert H. Calvert.

Q All right. Had he -- did he indicate whether he had already shown the plan to them at the time that -- or prior to the time he showed it to you?

A I don't know that he made the statement that he had been showing them anything. He just -- the best I can do is repeat back to you what I said, that he indicated to me that there were two of them that would, and Mr. Calvert himself had told me that the plan -- he had called me and told me he had seen the plan and that the plan was agreeable to him, and that was -- I don't know, maybe an hour or so before -- now, I may have gotten -- I mean, the time, I don't remember. I am sorry. It was during the day, and I think it was on Tuesday, but these things, I am just sorry, it has been some time. I can't recall exactly. If I am mixed up on it, I am sorry.

Q The one thing -- I followed your testimony very closely this morning, and we still have not been able -- at least in my own mind, I have not been able to conclude

who actually made the decision as to whether we were going to have single or multi-member districts for the other major counties aside from Harris County.

Q. Now, you have testified that the plan with single-member or with multi-member districts for Dallas, and presumably Bexar and every other major county except Harris was presented to you either on Tuesday or Wednesday?

A Yes, sir, I think it was on Tuesday.

Q What I am trying to determine, though, is at what point the Texas Legislative Redistricting Board, with yourself as Chairman, gave the staff any instructions as to the policy decision of whether to go for single or multi-member districts in those major counties. Are you trying to tell us that you left this important policy decision entirely up to the staff, and that you would have approved anything the staff gave you whether it was single-member or multi-member?

A No, I wouldn't go so far as to say I would have approved just anything they brought in here at all. I didn't see that at all. We gave a broad outline to them, and the plan that was brought in to me -- and I believe this is about the fifth time I have told you -- that was the map that I saw. During that time

I was -- I don't believe I was over in Mr. Spellings' office. He was over here several times, and it seems like to me I sent him over at the Capitol, and I believe it was in Mr. Bob Johnson's office. I believe Mr. Bob Johnson was doing as much work on it as Mr. Spellings, and that's the best I can tell you, sir.

Q But was the staff ever given any instructions before they came forward with that plan as to whether they were to draw a plan that would constitute multi-member districts for the major counties?

A I am sure they were. I am not familiar with them that order was given, and by whom it was given.

Q It was not given by you, then? You would have recalled if you had so done?

A The major drawing was done by Mr. Robert Spellings, and I do not recall giving him any instructions at all.

Q As to Dallas County you testified this morning that you apparently made your decision based on the people that you heard from from Dallas County and what their wishes were. Do you recall that at the -- I believe it was the meeting of the Legislative Redistricting Board held on October 6th, do you recall that a Mr. Victor Robertson, Jr., of the firm of Lewis, Bowles & Green in Dallas, testified as to certain polls that

had been taken in Dallas County?

A I recall that Mr. Mauzy presented a poll that he said was made by Mr. Lewis -- Oh, Alec Lewis. I don't know anything about Lewis, Bowles. Alec Lewis. He presented some sort of a poll of some sort at that -- the minutes will show what -- I mean, the testimony will show.

Q All right, sir.

A But there was a poll presented at that particular meeting, and, if I remember correctly, Alec Lewis had conducted some sort of a poll. I do not know how many people he talked to or who they were, or what questions he asked.

Q Let me very briefly refresh your mind as to the proceedings that transpired.

A I would agree. I am not trying to shortchange you.

Q Okay.

A But I will agree whatever is in the record there is in the record.

Q All right. The record reflects that Mr. Victor Robertson, Jr. testified at that hearing, and he indicated that a poll had been taken in January, 1966; another poll was taken in the spring of 1968, and still the last poll was taken a few months later, and that on that last poll, this was a countywide

poll, it indicated that 61 per cent of the people polled had a preference for individual districts. I believe he further testified that from the time of the first poll in '66 until the last one in '68, that the preference of the people had steadily gone up in favor of single-member districts for that county. Now, what I -- the reason I was laying the predicate on that is to ask you whether or not this evidence was weighed by you in assessing what the wishes of the people in Dallas County were, or whether you went strictly on the phone calls and letters and contacts that you had from the different business leaders and attorneys and other people that you testified you heard from?

A Yes, sir. That was -- certainly we considered that, but I have used Mr. Alec Lewis in the past, and, the fact of the business is, he has made at least four or five polls for us, and when he gets down to a single county, he always conditions that as -- in other words, it is difficult to evaluate on account of the small number of people that you see, and I am not saying that that is what the man testified. You paraphrased it. I am not vouching for your testimony. You paraphrased what the testimony said. The only thing I can say is, we certainly did hear the evidence of what Mr. Alec Lewis, who is some sort of a pollster up there,

had made a poll. I have no idea as to who paid for it or what the question was or anything of that sort. All that I can tell you is that there certainly was some testimony offered along that line.

Q Now, you further indicated that one of the factors as far as giving Harris County single-member districts was the fact that it had a rather extensive network, a network of highways and so forth. Now, isn't that actually true of any other major city, Dallas, San Antonio, El Paso? They all have physical characteristics, highways, freeways?

A Yes, sir, except that the east to west road that goes in toward Tarrant County is a toll road, and there is no development except industrial development, and no housing on it much, and there are no toll roads in Harris County, and I am no highway expert at all -- don't misunderstand me -- but Harris County is further along with the highways than Dallas County, and has been that for some time. Actually, Bexar County, as far as loops are concerned, is further along than either one of those two. Dallas County is third in the race as far as highways are concerned.

Q As far as the cost accounting, you indicated you have been involved in political campaigns, and you do appreciate the cost accounting?

A They do cost money, certainly.

Q Under your single-member district plan for Harris County, the average Representative running in that county under the plan adopted by the Board will have to associate himself with roughly only seventy-four or seventy-five thousand people, in round numbers; actual voters, the registered voters, would be less than that; that is correct, is it not?

A Yes, sir, but you have got no way, that I know of, that you can get the TV stations to just cut the audience out to that particular ---

Q Well, the point is ---

A In other words, the difference in making a race, in my opinion, is, it is expensive either way you go. I wouldn't say that one of them is negligible and the other costs a lot. I would say it costs a good deal of money either way you run.

Q Is it your position that a candidate running with a constituency of seventy-five thousand people is going to need as much television or radio time as if he had a constituency of one million three hundred thousand people, as you do in Dallas?

A You use "if" in there, and that "if" in taking a lot of factors, and you have to take in the factor of what kind of opponent you have and how much he is

spending. That is just something I couldn't answer. In other words, you have got to, if you -- there is no use in us getting off into how to run a race, but you have got to match your opponent.

Q What I am wondering is whether or not you considered the cost factor involved as far as deciding whether to go for the single-member or the multi-member districts in the different counties that are in question here?

A I don't recall that there was any discussion made on the actual cost of running a race in Dallas or Harris Counties, other than to say that I think every one of the Board members -- well, I shouldn't say every one -- I don't know -- but as far as I was concerned, it costs a good deal of money to run a race in a metropolitan area, regardless of what race you are running for, whether it be for the City Council or otherwise. It costs quite a bit of money.

Q And as far as the minority groups, the Mexican-Americans, say, in Bexar County, and the Blacks in Dallas and other areas, did you at any time indicate to your staff that you would like to see a plan of single-member districts to see what kind of representation they might be likely to get under that plan, in contrast to a multi-member districting plan for Bexar and Dallas Counties? Did you show any interest whatever to see

what the two alternatives might come up with or how it would affect the minority groups?

A The only thing I can say is, as I testified earlier, I do not recall such a plan being offered to me, and I don't have an estimate of what it would cost, on account of the variables that go into it. I couldn't give you an answer to that, because it is too speculative as to what kind of an opponent you have got, and what kind of a race, and whether it is a close race or otherwise. A close race always costs more than an easy race.

Q I think you further testified that a large factor that weighed in your mind, as far as Harris County was concerned, was the unanimity of the people that testified from that county and the fact that apparently most of them, or the biggest percentage of them, were in favor of single-member districts for that county. Would the lack of testimony on the part of people, say, from Bexar or Dallas Counties, or the lack of unanimity, say, in Dallas, that is, the opposite of what happened in Harris, was that a factor that you also weighed in deciding to go for multi-member districts in both Bexar and Dallas Counties?

A Well, I would say that we would go on a test of preponderance of the evidence, and that would be the

best test that I could give you. That was what was in my mind. I certainly wouldn't use the scintilla test or beyond a reasonable doubt test at all. It would be the preponderance of the evidence.

Q And that would be a preponderance of the people that contacted you, or that appeared and testified at the hearings that the Board had?

A That's all I could know, would be what came to my eyes and my ears. Of course, some people came in. They were representing groups, and, of course, you would give some weight to them saying that, "I am representing so-and-so, and so-and-so and so-and-so," and the main way you get your evidence would be through your eyes and through your ears.

Q By the people that actually take the trouble to write or call or come up and show up at the hearing?

A Yes, sir, those who would express an interest in it, and also that, as I testified earlier, would be from what knowledge that I would have of matters after being in politics for some time, as to whether or not -- what the wishes were.

Q Of course, you have been in politics long enough to appreciate the fact that your minority groups, both your Mexican-American and Black, by and large, are silent in this matter; they don't have the means to

come up and testify or write a letter or make a telephone call or send a wire; consequently, if we are going to make a political decision of this type based upon the people who either write or telephone or come and appear, these people will not be reflected at all?

A That's the reason why I answered just a moment ago that I took the other factors of my own knowledge into it. In other words, you have to balance that in your mind, because -- as to those who are the most able, and do the best you could to try to figure out what the wishes of the public are, and that is quite a few factors.

Q But, by and large, your, as you stated, your decision, like you stated, was a political decision?

A Yes, sir, and I mean -- I want to re-emphasize, I am not talking about running for office. It is a matter of politics as to how the State shall be -- should be apportioned, and that was exactly what we tried to do.

Q That's all I have.

CROSS EXAMINATION

Questions by Mr. Holkin:

Q General Martin, my name is Stuart Holkin, and I

represent Curtis Graves in the Houston case.

A Yes, sir. This is Senatorial?

Q Right. We are going to switch gears and look at the Senate.

A That's what I was trying to get in my mind.

Q As I understand it, sir, you missed the first meeting of the Legislative Redistricting Board?

A That is correct, sir. I did, sir.

Q And that particular testimony, which included testimony of Curtis Graves, the date was August 24, 1971, was reduced to writing?

A And I have read it, sir.

Q All right. And you ---

A I mean, I couldn't give you word for word in there, but I have read it, and I have a general knowledge of what Mr. Graves said.

Q All right. Well, if you have read it and you have a general knowledge, then, I guess you are familiar with the fact that the main focus in that entire hearing that day appeared to be the question of the effective dilution of Black votes in Harris County senatorial districts; both Mr. Graves testified as to that, and Mr. Barnes questioned Mr. Blythe on that particular issue of the two plans, and the question of whether or not Blacks were going to lose the one seat they had.

Is that your recollection?

A Mr. Barnes and Mr. Graves exchanged some questions and answers. I agree with that, yes, sir. The testimony will speak for itself.

Q All right. And it is your understanding that the focus of this particular hearing was on the question of the dilution of Black votes in Harris County?

A Mr. Graves' testimony was concerned with the Black vote of Harris County, yes, sir.

Q And in addition to the question of -- well, let me get this straight. Now, if I understand it, the members of the Redistricting Board, as well as their staff, were given certain Law Review articles and various other evidentiary material to consider in making their deliberations, and we have talked about it for the House. I presume they had it for the Senate, as well?

A The evidentiary was mostly furnished to all of the members by people from the outside. The law part of it was furnished by us. We furnished most of that.

Q All right. Now, who, if you know, selected the Law Review articles that were to be distributed?

A They were sent copies of articles, some of them that had been found by my staff, and some of them had been sent in by Mr. Mowry and other lawyers that are

interested in this case. They sent these in as evidence to us, or at least showing us what the law was. I can't recall exactly where all of it came from, but we did have quite a bit of that.

Q All right.

A Some of it, the bulk of the case law was supplied to me by my staff.

Q And when you were speaking with Mr. Idar a little earlier, you said the question of dilution of Black and Mexican-American voting was one of the specific things you instructed your staff to watch for?

A Correct, sir.

Q Now, are you aware, sir, that there was a plan proposed by a Senate Committee, -- the Senate did not pass a Senate reapportionment plan, as I understand it, but there was a plan proposed by a Reapportionment Committee of the Senate, or whatever its title was?

A My understanding of it -- and I may be mistaken -- but my understanding was that some Senators got up a resolution and signed the resolution and passed it over there, and that resolution was delivered to me and to other members of the Commission.

Q All right. And that was part of the evidence you had?

A The form of it, I am not sure, but I think it was a resolution that was just signed by quite a few of the

Senators involved. I don't know how many. I can't recall.

Q You would have been, I presume, the only attorney on the Redistricting Board; is that right?

A Mr. Bob Armstrong is also an attorney.

Q He is an attorney?

A Yes, sir.

Q All right. And so the two of you, as far as the legal distinctions that had to be made, really would have to lead the others, or at least elucidate the questions to the others on legal questions?

A Well, Mr. Barnes had an attorney of his own. Mr. Spellings is also an attorney, and Mr. Bob Johnson, if I remember correctly, is an attorney.

Q Were the staffs the same for both the Senate and House reapportionments?

A Essentially the same. I don't recall any changes.

Q And as an attorney, having read the Chavez case and whatever companion cases you have read, you are aware that there is a distinction in the law between a political gerrymander, assuming one is proved, and a racial gerrymander, that there is -- I am sorry ---

A A distinction between gerrymandering ---

Q Political gerrymandering to preserve a party's interest, as opposed to racial gerrymandering to

dilute a racial group?

A Yes, sir.

Q And that one of those is constitutionally prohibited, and the other at this time is not?

A That is correct, sir.

Q All right. Now, are you aware, sir, of the percentages which were -- percentage of non-White persons in the senatorial district proposed by Mr. Graves?

A Am I aware of it?

Q Yes, sir.

A I believe -- and this is from memory -- I don't have anything in front of me to refresh me -- I think it was something a little under fifty per cent. I may be mistaken about that. I am just giving that from memory. It was -- it seems to me it was just a little bit more than what Senator Barbara Jordan's district has at the present time.

Q And what about the percentage of the proposal by the Congressional -- by the Legislative Committee on Reapportionment, the Senate Committee Reapportionment, the State Senate?

A I am not familiar with that, sir.

Q All right. Would you know whether or not it was larger or smaller than Senator Jordan's?

A I just don't recall at the present time.

Q How, in the meeting that you did attend, the second meeting, you discussed the fact, or made the statement that there would probably be some executive sessions of the Redistricting Committee in order to resolve or discuss the matters that had been presented to the Council?

A I made such a statement.

Q Did such sessions occur with regard to the Senate?

A No, sir.

Q All right. Were there any ---

A There were no -- so that we will get the record, since we are trying all of these cases together, there were no executive sessions of the Commission ever held insofar as I attended. In other words, there may have been one or two members met somewhere else, but as far as the five of us ever being in the room together, or more than two of us in the room together, I do not know of it.

Q Were there any draft plans that the Council had, the Council staff had circulated among the Council members, proposed draft plans that they had suggested, and then were sent back for further revision?

A Yes, there was a -- the Senate plan was -- all of those plans were revised numerous occasions, and this was just like the rest of them. It was revised, and then it was

revised and -- in other words, that is the way you do something like that.

Q Yes, sir. Well, as far as the revisions are concerned, would they simply be sent back to the staff, saying "This particular area is objectionable," or "This particular matter is objectionable," for some reason, or how would the revision get into motion?

A Usually they were -- nearly all of them were mathematical errors or errors in which the law was violated, and that was usually the case that came about. It sounds like an easy job, but just doing the mathematical part of it and doing it correctly is a difficult job, and the unnecessary division in the Representative business -- you are not interested in that, but over in the Senate part, of course, there was no -- the single-member district or multi-member district was never discussed. I am not answering your question, but I thought maybe I should short-cut it. We never discussed that at all. We always recognized it would be single-member districts, as far as the Senate was concerned, and there were -- some Senators would come down and talk about it and point out certain discrepancies, and we would certainly try to correct them, and I think the Commission did the best they could to correct these

discrepancies.

Q What was the response of the Commission to Commissioner Armstrong's pointed objection that the way the lines were proposed in Harris County appeared to dilute Black minority strength, political strength?

A I don't know that there was any response ever made to him. I didn't know that he was not going to sign the report until he failed to sign it when we met, sir.

Q So that the first time that you really knew that Commissioner Armstrong had objections to the proposed plan would have been the day the signing was to be effected?

A That day was the first day that I knew he had serious objection to it, yes, sir.

Q All right. And there had been no discussion between you and him regarding Black voting strength in Harris County?

A No, sir, I didn't say that. You asked me the question did I know it up until that date, and I answered it "Yes." There had been a discussion on the day that the signing took place. He came to my office and had four or five objections to the bill, and we talked about the objections, and when he left my office, I did not know whether or not he would sign the report

or would not sign it. I did not know until it was presented to him on the stand over there, and he refused to sign it, and then Mr. Mutscher refused to sign it.

Q What were the nature of Mr. Armstrong's four or five objections?

A I am afraid I couldn't recall those right now. I am sorry. He ---

Q Did they deal with dilution of Black minority voting strength in Harris County?

A I don't recall that they did. He just seemed to be dissatisfied with the Senate reapportionment, the best I could put it. I don't recall any specifics that he pointed out. I don't recall right now.

Q Was one of the factors that the Commission considered that of insuring incumbent re-election?

A I didn't -- that is your statement. Are you asking a question?

Q Yes. I am asking was that a factor?

A Oh, no. That was a very minor factor, if at all. In other words, we are talking now about the Senate Bill?

Q Yes, sir.

A In other words, so that the record will show what we are talking about, we are talking about the Senate Bill. The Senate Bill, I don't recall that ever being

particularly discussed. The residences of the Senators was pointed out, and, of course, I wouldn't -- I would be telling you wrong if I said that we went out of our way to pair Senators up. We did not; but we did not go out of our way to keep from pairing Senators, either one.

Q Was one of the factors that the Council considered historical analysis of the way lines had been drawn in the past?

A Well, yes, sir, I would say that the community of interest might have some minor factor involved in the matter.

Q I am trying to get the idea or the understanding of how, when you are faced with the problem of just drawing lines for the State, do you start with the old lines and say, "Well, we have got a population deviation. We will just vary the line a little bit"?

A No, sir. I don't think we ever looked at the old map at all. As I tried to explain it awhile ago, we start out, usually one side of the State, and then you try to come across and try to make it come out, and when it doesn't come out, which it will not the first time around, the difference -- that's where you get the difference on the number of districts you have, because you say, "Okay" -- let me give you -- just to

show you how it works, you start out and say, "Okay. The ideal is this," and then ---

Q The ideal being numerical?

A Yes, that's right, and then you say, "Okay. This one lacks this much," and then you say, "Okay. This one lacks this much." You see, you don't have to go but about ten districts, and you have done made a district, haven't you, or another district, or you have cut one off, one or the other, you see, and so it has to all be done as a unit. Otherwise, you can't do it, because the counties don't have a breakdown enough to where you can make it come out exactly. Neither does the census tracts. So you just have to do the best you can, and that is the way it is done. I did not do that type of work. That was done by the staff.

Q But it is your understanding they would have started at the east part of the State and simply ---

A Now, as far as the Senatorial concern, I don't know where they began. I was talking about the Representative Districts, because there was a conflict and troubles over there in Bowie County, and where the Senate started, I couldn't tell you, except I do know that they told me they started on one side of the State and tried to come across.

Q Now, the same question with regard to the Senate Districts that you had earlier with regard to House Districts. Did you have any businessmen suggest to you, either by phone call or by letter or telegram, the way Harris County Senate Districts should be drawn?

A Well, we had suggestions from businessmen, from lawyers and from legislators, and just general across-the-board type group, yes, uh-huh, certainly.

Q Now, the plan that has been promulgated, does that particular plan reflect the suggestion of any one particular person or ---

A No, sir. As far as my testimony is concerned, I don't know of anyone who is one hundred per cent pleased with it; I would have to answer that the same as the Representative Districts. No person is a hundred per cent pleased with it.

Q All right. And so this particular plan, to get this another way, was not presented by any particular person; one person did not present this plan?

A Parts of it, of course, were. That's what you do. You piece them together. But if I had to tell you that there was somebody happy down there in Harris County right now on every line, I would have to tell you I -- of course, the great bulk of the people don't

know anything about it, but those who are knowledgeable, I would say that no one is really happy with the whole situation.

Q All right. Now, with regard to parts of the plan, with the Harris County part, did that come from any particular people in Harris County?

A No. There was a lot of suggestions made by the various and sundry Representatives. I believe Mr. Graves had a plan, and several other Senators. Mr. Ogg had a plan, and some others. I don't know whether Chet Brooks had one or not. It seems like he did, but most of those plans were made up for their particular area. That's what the -- and then we would ask them to put their area into the county and, to be honest with you, a great bulk of them failed in that particular test. They couldn't do that.

Q Is there a desire on persons charged with redistricting to get some type of symmetry or rational line-drawing? Is that one of the factors considered?

A Oh, sure, that's one of the guidelines we have in the State Constitution, and I would assume under the Fourteenth Amendment there would have to be some sort of a rational basis, but, now, that doesn't mean that they would have to be square or round. It means -- in other words, it comes, to answer your question, is

that they have forbidden gerrymandering, and that is the opposite of a rational basis, would be gerrymandering.

Q And would you characterize the present apportionment plan for Harris County of the Senate seats as one that is based upon reason, and a rational plan?

A I think so, sir.

Q And would you tell us what factors, other than numbers, would cpt you to select this particular plan as opposed to any other? For instance, we discussed earlier in the House the question of the way highways in Harris County evenly divided population, and that sort of thing. What factors with regard to the Senate plan ---

A It would be the same testimony that I would have to offer that I offered awhile ago concerning the Senate plan. The same factors in the Chaves case and related cases would apply, and the Constitution of our State and the various and sundry other factors that were taken into consideration is what you would do.

Q Would highways be one consideration?

A Well, I would say it would have a very small amount. The highway would be a very small amount of the consideration. We would have liked to have drawn them to where they would fit the voting precincts, and we

got into that at one time, but it is absolutely impossible to take the present voting precincts and make them come out to where you could reapportion, and that is sad, but that is just the truth about the matter. Some factors you can't use, and voting precincts is one you couldn't -- you just couldn't follow them at all. Now, highways, yes, we usually try to pay some attention. We didn't like to cross highways because of inconvenience of the voter having to drive to a cross-street in order to get back over to a school and vote. Of course, these things are minor, though. They are not a basic factor.

Q All right. Now, let me understand this. Highways were a minor consideration, and you said you didn't really look at the 19 -- the old lines. You started afresh?

A Oh, we looked at them, but we didn't undertake to use that as a basis for drawing lines.

Q Now, are there any other factors besides highways, the old lines and population that went into your decision for Harris County?

A Sir, I am in this shape: I have answered that about three times.

Q This is the Senate, sir.

A I understand. Well, all right. We will come back, and

I will come back to what I answered awhile ago. We took into consideration the compactness of the districts and the -- to somewhat the community of interests, the natural -- well, for instance, you take where, you get down there where you have got that only one tube to go, you know, down in South, where you have got that tunnel there, and you have got other natural barriers. You take into consideration the -- the main consideration, of course, is trying to lay out the districts to where they will not be gerrymandered, and take care of the minorities, and that is the considerations that were put into the plan, and you mix that all together, and you don't use one particular one in saying that this is paramount. The only paramount, I could say, is the restriction we are under under the Texas Constitution, which in the Senate is not -- it is very, very small, and the other, the main paramount thing would be the decision of the Supreme Court of the United States on the one man, one vote matter, and that is the best I can tell you.

Q All right. And compactness of the district would be one plus factor; that is something you would strive for?

A Yes, sir, but you can't -- at times you can't make a

district as completely compact as you would like to. That is one of the difficulties you run into, and you just have to do the best you can on that; but when you do have to do that, well, you certainly try not to -- you just have to, not to upset the apple cart on the minority groups.

Q Yes, sir. And let me show you this for a second, a copy of the Harris County senatorial districts which appeared in the Houston Post on Saturday, October 16, 1971, and ask you, first of all, if that is your recollection of how the districts were drawn?

A I just -- all I would have to do is presume that Harris County -- I mean, the Houston Post printed up what it was. The true record is reflected in the Secretary of State's Office, would be the only one that I could testify as being true and accurate. I just wouldn't know.

Q Well, assuming that is a close approximation?

A I would just have to assume it. In other words, the best record would be the record that is filed with the Secretary of State. There were some newspaper articles that were printed in error and some maps were printed in error, and I don't know whether that one is in error or not.

Q Would you say, sir, that Senate District 13, which

encompasses both the western and the eastern boundaries of Harris County, would fit the criterion of compactness, the one that stretches west, north and east, and almost encircles the City?

A I would say that they would, taking into consideration that you had to arrive at the other districts in that area, and that was the best that the Commission could do.

Q Now, when you considered the other proposed plans, was there a discussion of, for instance, Curtis Graves' plan, and a decision made, "No, we can't adopt this plan"? A discussion of Mr. Blythe's plan, and a decision, "No, we can't adopt this plan," or did you simply accumulate all of the plans and simply hand them to your staff and say, "Do something"?

A Well, I would say this, that the -- oh, one way you might say, but that's not exactly the -- we did give them general guidelines, and they did have those maps, but just so far as taking a vote on the Curtis Graves plan or any plan, we did not do that, sir.

Q And the general guidelines that you gave them would have been ---

A The things I have repeated here quite a few times, yes.

Q All right. Now, you don't know specifically why Mr.

Graves' plan, for instance, was rejected?

A I don't recall exactly why it was rejected, no, sir, I don't.

Q Do you remember some of the discussion that surrounded it?

A Yes, sir, I think there was some discussion among my staff that it would be tending to gerrymand in favor of the racial group. In other words, you have got to -- you have got to -- as I understand the Chaves case, you have got to -- the one man, one vote deal, you have got to go both ways in this thing. You just can't pick out one minority group and say, "Okay; we are going to make a district, and we will stick them all in that district," and this is just not the acceptable way.

Q All right, sir. Were you aware, sir, that the plan as promulgated cut down on the percentage of Black minority members in any one senatorial district from what it had been?

A No, sir, I was not aware. I was -- the only thing that I do know that it was, as I stated -- testified earlier, in Barbara Jordan's District, the percentage was about the same. It might be -- the new plan might be just a few percentage points more Blacks than Whites, and, of course, that is a guess, because--

in other words, what we are talking about here is census figures, and actually on the ground might be a little different, and actually the number of people who vote might be different, but as far as census was concerned, that is true, yes, sir.

Q All right. Now, there is also an indication that you took into consideration with regard to House reapportionment election returns for the past ten years. Was that a factor, or was voting patterns of Blacks in Harris County a factor in drawing Harris County Senate lines?

A I think we talked about that some, and we were shown, I believe, the Legislative Council showed us some voting patterns. I don't know whether it was ten years. I shouldn't have used that ten years. It would be the last -- oh, well, I would say since the Kennedy election. That was in 1960, wasn't it? If I am not mistaken about it, it was '60, and we tried to look at some of the voting patterns since then to determine where the residences were, more than anything else. As far as trying to make one come out Republican or Democrat or anything like that, we didn't -- that was not one of the considerations that we had.

Q And with regard to the community of interests, were

you aware, for instance, that Blacks and persons who lived in what is known as the silk stocking district of Harris County, the River Oaks area, for the most part, voted diametrically opposed to one another?

A Well, I am just not that acquainted with the Harris County voting. I just -- I couldn't answer that question. I am sorry, sir.

Q And that was not brought to your attention during the duration of the reapportionment considerations?

A I don't recall that we talked about it at all, sir.

Q All right.

A We might have. I am not saying we didn't. I mean, like I say, I was in and out of the room a lot of the time when discussion was going on among the staff members and things like that, but I just don't recall having a conversation about that.

Q All right. And with regard to Mr. Armstrong's objections to the plan, you did not hear from Mr. Armstrong any particular objections prior to the day for signing; is that correct?

A Yes, sir.

Q That was the first you knew that he really had some objections to the way Harris County was being redistricted?

A Well, I don't think it was confined to Harris County.

He seemed to be unhappy over several points in the bill, but I was very definitely of the opinion when he walked out of the office that he would sign. I mean, that was my opinion, that he would sign the order or whatever you want to call it -- in other words, the plan. I was very definitely of that opinion, and I was a little bit surprised when he refused to.

Q Now, we have discussed the method by which the House plan was first presented to you, and it was here on the table in this conference room. How did that decision-making operation occur with regard to the Senate?

A It was approximately the same way, but the Senate was much easier to do than the House of Representatives. You see, just for the record -- I know you know it, but just for the record, the higher the number of people in a district, the easier it is to draw the district, and the smaller the number, the more difficult it is to draw it. So the Senate was not as -- well, if I had to put it on a percentage basis, I would say it was probably a third less difficult than the House, probably more than that.

Q When was the first time you saw the plan that eventually became law?

A Are you talking about the Senate plan?

Q Yes, sir.

A I can't remember. It seems like to me I didn't see it until the morning before it was presented the next day.

Q Was there any discussion among members of the Council as to that plan that became law, if you saw it so soon before it was enacted?

A Oh, there was discussion going on all of the time, yes, sir.

Q With regard to the specific plan that was adopted, was there an executive session or ---

A No, sir. As I said, there were no executive sessions at all. There was not time that I can recall where more than two members of the Board that were ever together, and I talked to Mr. Calvert about it in his office -- he asked me to come over there, because he is elderly -- and I went over to his office and had the map with me, and Mr. Pat Cain went with me, but he did not go in the office, just the two of us were there, and I showed it to Mr. Calvert and asked his reaction to it. I said, "It has been presented to me, and I want to see what you think of it," and he worked around a little while, and then he just came back and said, "I am willing to sign it." I said,

"Well, that's fine. I appreciate your saying it, Mr. Calvert, and we will go ahead, then, and run it through the computer," and I brought it back over here, and Mr. Cain -- I don't believe I did -- I turned it back to Mr. Cain, and the next time that I saw the plan was the occasion on which we met and it was passed out by the staff to the general public, and my signature was affixed to it, and I asked Mr. Johnson if this was the identical plan that was shown to me, and if you will look back in the record, his answer was to me, "Yes, it was," and then we were sworn. The Constitution requires us to be sworn, and we all were sworn, and then they took our acknowledgment on the matter, and that was the conclusion of it, and I personally carried it down and delivered it to the Secretary of State and received a receipt, and that is the way it was worked.

Q From where did you get the plan?

A Sir?

Q From where did you get the plan that you took over to Mr. ---

A Mr. Robert Spellings brought it to me.

Q All right.

A I say "brought it to me." Let me say this: He brought it over here, and this is hearsay, but I am

just telling you. You asked me. To the best of my knowledge, he brought it over and delivered it to Mr. Pat Cain, who is one of my Assistants. Mr. Cain did not look at it; he brought it to me rolled up, and I brought it in this room and looked at it, and the two gentlemen who were helping me, we went over it together, and we determined at that time that we could live with it, and while it was not a hundred per cent suitable to me, the time element entered into it, and we had to get on. By that time, we had -- we knew we had to do the House, and so we -- I said, "I believe I can sign it," and I said, "Now, as Chairman, I think I should present it to Mr. Calvert and see if he is willing to sign it," and he did, and then it was presented -- after Mr. Calvert was presented, I believe Mr. Cain carried it to Mr. Bob Armstrong's office, and then he came back here the next morning, if I remember correctly, around 10:00 o'clock in the morning, and that was -- I had a conversation with him, and then that afternoon, or morning -- I don't remember exactly, but a few hours later -- maybe he was here at 9:00 and we met at 11:00. Anyhow, it was a few hours later, an hour and a half or two hours later, we met over there, and it was adopted.

Q For the record, sir, would you identify Mr. Spellings?

Who is he?

A Mr. Spellings is a lawyer and an assistant to Mr. Barnes, to the best of my knowledge. He was instrumental in and did a lot of work. I would say he did the majority of the work, he and Bob Johnson did the majority of the work on the reapportionment, as far as the scriveners' part of it is concerned.

Q And as far as the first time your staff saw the plan, it would have been when Mr. Spellings brought it over?

A That's right. My staff had prepared a plan, but after I looked at it, it was faulty, and I had to reject it.

Q And how was it faulty?

A I'll declare, I don't remember now. There was something wrong with it somehow. It had too many Senators, or not enough, one or the other. I think that is what happened. That sounds silly. Right now, you would say, "Gosh, looks like you could count," but when you are working one of these up, it is just not that easy, and I think that's what was the matter with it. I am not certain. One of those gentlemen, you can take his deposition, and he can tell you. I have forgotten what it was, but something was wrong with it, and that was presented

to me on the day before Mr. Spellings brought his over or sent it over here.

Q Now, when you first received the plan that was promulgated, you analyzed it, as you testified, and stated that you could sign it?

A Yes, sir.

Q What were the factors that you examined in that particular plan?

A Well, I mostly had to take the word of the staff on the various and sundry factors, and I quizzed them as to whether or not it complied with the one man, one vote test, and I asked them, I said, "I want to make certain, now, does it -- do you feel like it will pass the Chavez case insofar as the racial -- the protection of the racial or other type of minorities?" And the answer was, "Yes," it would pass the test, and I -- to be honest with you, I had Mr. McDaniel to look at it, my attorney, who is sitting here, and he gave me an affirmative answer on the various and sundry questions. I didn't get to all of them, but I asked them various and sundry questions, and they vouched to me that it would, and I took their word for it, and I made some spot checks on it, and the best I could find, they were correct in their answers, and I have to trust people who work

for me.

Q Were any of your questions that you asked relating to the dilution of the Black voter strength in Harris County?

A Yes, sir, that was one of the discussions we had.

Q And what were the answers that you received?

A The answer we received was if the Black vote were increased in one district, we would be guilty of gerrymandering, and it had to remain approximately like it was.

Q So, as I understand it, the people who were all speaking for the most part about changing of the lines different than the ones that were enacted on Harris County Senatorial Districts were attempting to get additional Black strength; the State of Texas was concerned with the reverse of gerrymandering, but, in any event, the racial make-up of the people in Harris County was one of the prime considerations in drawing these lines?

A That is -- the one man, one vote and the racial make-up are the prime responsibility which the Supreme Court of the United States might knock it out on, and that is -- yes, sir.

Q All right. And so you were concerned with drawing lines that in part were based on race?

A No, sir, I don't say they were based on race. They were based ---

Q It had a racial factor in it?

A Well, it had to have a reverse of the racial factor; in other words, we had to show that -- I mean, we had to draw the lines to where they would neither favor nor discriminate against, either from a racial majority or a minority.

Q As opposed to a simple random drawing?

A That is correct. In other words, the general public feels like -- and I have had lots of people approach me on the street and say, "Why don't you just feed this thing into the computer and let the computer just, you know, just find it out?" Well, of course, the Supreme Court didn't decide that way. They decided you had to take these other factors into consideration.

Q Do you have an opinion as to whether or not a Black could now be elected as a Senator from Harris County?

A That is an "iffy" question.

Q Yes, sir. Do you have an opinion?

A As far as I am concerned as a politician, I would say that if he was -- a Black -- and we are talking about the Senate now; is that right?

Q Yes.

A If a Black offered from a district down there that -- on, I would say at least three districts, or maybe two for sure, if they were well-qualified, and everything else being equal -- that's what you are trying to put it to me -- I mean, we are talking about things being equal?

Q Well, we have already discussed the fact that there is a racial ---

A Yes. Well, being equal, yes, sir, I would say there is very much likelihood of a Black being elected from Harris County.

Q All right. Now, you have earlier said that you thought that, at least that Dallas County was most likely to vote the man or vote the issue?

A Yes.

Q Where on your scale would you fit in Harris County?

A Well, I would say it is somewhere close to about the same. The fact of the business, since the last mayor's election in the City Counsel election, I would have to revise my answer on that and say it is just about the same as Dallas County. They vote for the man, and ---

Q You are saying the last mayor's election?

A I am talking about in the mayor's election. I am talking about the City election down there, ---

Q Yes, sir.

A --- and the School Board election. I would say that as far as Harris County is concerned, that they are -- I withdraw what I said earlier. I think that they would equally at the present time, would vote for the man. I was not as sure of that until this last election.

Q And the last election showed you that there is a propensity on the part of all citizens ---

A I wouldn't say "all citizens." I wouldn't go that far.

Q It doesn't break down along racial lines?

A No, sir, it certainly does not, in my opinion. I wasn't -- I didn't -- that was your opinion, that all citizens were that way, but I would say the great bulk of the citizens are that way.

Q Now, sir, who would you say in present memory would have the greatest expertise in the Blacks, the voter preferences, from Harris County, people that you know? Would you consider Senator Jordan one of them?

A I would say Senator Jordan. I have found her to be -- have a real good knowledge and well-balanced and way above the average for a State Senator, but, on the other hand, I would have to temper that with the fact that she is seeking a Congressional seat, and that her

answer might not be just exactly the way she -- I mean, I am not saying she would do it consciously -- unconsciously, she might sway her answer a little bit. I mean, we are all that way.

Q What about Mr. Graves?

A I would say Mr. Graves is not a very good judge of the voters of Harris County.

Q How about the Black voters in Harris County?

A Well, I don't think that he really would be, in comparison to Senator Jordan, I would say that he was not as expertise as she is. I am not saying there is anything wrong with Mr. Graves. You asked me about his expertise in that particular line, and I would say Senator Jordan's expertise is superior to his, and that is something that, really, I don't know whether it has anything to do with this case, and certainly you just asked me about it, and I answered.

Q Are you aware of the percentage of non-Whites who live in Harris County?

A I am sorry; I don't have the figure right here in my mind. I had it at the time. I think it is around eighteen per cent, but I could be mistaken.

Mr. Reporter, strike that, if you don't mind. I don't recall that. I just don't know.

Is it all right with you for him to strike that?

Q You can indicate the striking of it.

A I did have it at that time, but I don't have it right now.

MR. RICHARDS: I tender for the record -- I have gone through the three folders that were produced by Mr. McDaniel in response to my request for all communications relating to the written communications relating to this apportionment issue. I have extracted all of the communications that I found that appear to relate to Dallas County. Obviously, Mr. McDaniel will want to go through there, as will the other parties, but I, at least at this time, would like to tender to the reporter and ask him to at least mark those communications relating to Dallas County as a part of this record on my representation that these are all matters that I extracted from the files that were produced here by Mr. McDaniel. Subject to your right to check them, is that agreeable?

MR. McDANIEL: Well, I have no objection to Harry reproducing them.

MR. RICHARDS: Well, he can attach them to the deposition as being that which was produced in

response to our request, and I am not offering them into evidence.

A I would have to take each one of those myself, and I am sorry, I just -- I will let them speak for themselves. If you want to introduce them that way, I have produced them, and it doesn't make any difference to me.

MR. McDANIEL: Let him produce them. I don't care if he produces them. If we have objections to them, we will make our objections at an appropriate time, and if I find others in the record, I will put them with them, and if I think some of those are inappropriate, why, I will voice an objection.

MR. RICHARDS: Sure.

MR. LUNA: Let me ask this, now. Now, you are simply asking to have them marked as exhibits that the Attorney General was asked to produce, and did produce?

MR. RICHARDS: Yes.

MR. LUNA: You are not offering them as evidence in this case; they are a part of the deposition?

MR. McDANIEL: That is correct.

MR. RICHARDS: If we want to offer them at

some later time, I would have to offer them. I am just trying to get them identified.

(Thereupon, the deposition was recessed at 1:30 o'clock, p.m. until 4:45 o'clock, p.m., December 27, 1971, at which time the proceedings were resumed as follows:

CROSS EXAMINATION - (Cont'd)

Questions by Mr. Nelkin:

Q General, when we broke off, I was questioning you about -- I am not sure what I was questioning you about, but, in any event, one of the things we had talked about earlier in the deposition was the question of businessmen in Houston whom you had consulted with regarding Senate lines, and I would like to know if one of the businessmen that you talked with was the publisher of the Houston Chronicle, Mr. Collier?

A I talked to Mr. Collier about reapportionment, I think, on maybe one or two occasions over the telephone.

Q Would that be regarding the House, or Senate, or both?

A It was both. He had some ideas as to both the Senate and the House.

Q All right. Did he submit a specific plan, or have someone draw up a plan for the Senate?

A Not that I know of. He was speaking in general terms with me. He didn't bring any map and give me a map at all, no, sir.

Q Was there ever a discussion of corporate income tax during the duration of the discussion concerning redistricting of the Senate?

A Now, you are referring to me and Mr. Collier?

Q No; I beg your pardon. The members of the Legislative Redistricting Board.

A No, sir, I don't recall the corporate income tax ever being mentioned in any of the discussions I had with any of the members of the Board.

Q And did you have an occasion to speak during the deliberations with Senator Barbara Jordan?

A I believe that I talked to her maybe once or twice informally. She never did come to my office, and I never did go to her office, and I don't recall ever talking to her over the phone, but I have a faint recollection that I did talk to Barbara Jordan on maybe one occasion. I am not certain about that. I am just sorry, but, you know, when you see hundreds of people every day, you can't remember everybody, but I know I did speak to Barbara Jordan one time. She and I have always been good friends, and I said to her something about it, and she is usually in a very jovial

mood, and she laughed and said she didn't envy me the job I had, or something like that. Said, "I am sure glad I don't have to put up with any part of it," or something like that. I don't know, but it was along that line. But as far as her getting a map out and showing me what she wanted or what was desired, I don't recall that. Now, she might have, but I do not recall it.

Q All right, sir. As I understand it, perhaps she suggested a method by which the lines could be drawn for the Senate, but you don't recall?

A I don't recall that she ever got into that particularly, about the method. To be honest with you, if she did, I don't recall if she did at the present time.

Q Do you happen to know if it is possible in your conversations with her you discussed the corporate income tax?

A I don't ever recall talking to her about the corporate income tax at all. Most of my conversations with Senator Jordan have been just, "Hello there. How are you getting along," and that type of thing. I have never, outside of my own legislation that I would be interested in over in the Senate, I haven't ever talked to her about taxation at all. I am pretty sure I have

never talked to her about taxation.

Q Did she voice any objection, general objection, that you know of regarding the dilution of Black voter strength in Harris County regarding State Senate races?

A I don't recall that she did, no, sir.

Q All right. Now, one other thing that I am rather foggy on ---

A All right, sir.

Q As I understand it, you and the other members of the Council simply submitted Law Review articles and the Chavez case and the others ---

A I was the one that presented those.

Q Okay. You presented these to the members of the Council or to staff members?

A No, I presented them to the members -- we call it Commission, if you don't mind; either way you want to call it, whatever it is. Anyway, I think I presented one or two to Mr. Bob Calvert, and then he told me he didn't care to see any more of them at that particular time, and I don't know whether I presented all of them to him, but I did present what I had to Mr. Armstrong, and I do know that Mr. Armstrong came to the Capitol -- I mean, came to the Supreme Court Building and secured other information from other people in the building

here. At least, that's what he told me he did, and I saw him over here with several cases that had been passed on all the way from Baker vs. Carr up to the Chavez case.

Q Did Mr. Johnson and his staff receive this same material?

A I gave it to them, yes, sir.

Q Did you specifically give it to Mr. Johnson?

A No, I very seldom dealt with Mr. Johnson. It was with Mr. Potter, and I can't think of the other gentleman's name, some other gentleman that worked in his office there. I don't recall having a conversation with Mr. Johnson about the matter at all.

Q Okay. With regard to the ultimate map of the Senate,---

A Yes, sir.

Q --- including the map of Harris County Senatorial Districts ---

A Yes, sir. Are we talking about the Senate now?

Q Yes, sir.

A I want to be sure we get these straight.

Q Your testimony, as I recall it, was that the day before the matter was finally passed, you saw the plan for the first time?

A The completed plan. Now, I had seen the working

plans, on several occasions. In fact, I made one visit to the Legislative Council Office over there and talked to them a while, and I made a visit to -- I don't know whether it was Mr. Spellings' office, or somebody else's office. It was an office on the ground floor; and it seems to me like it was on the ground floor, and we looked and talked for a good long while on that occasion about the Senate re-apportionment, but insofar as the completed map was concerned, the first time I saw it was a couple of days before it was adopted.

Q Was the plan adopted, was it drawn by the Legislative Council?

A Well, I couldn't swear as to who actually did it. I assume -- and this would be just an assumption on my part -- it was a joint effort of the Legislative Council and Mr. Spellings, and I don't know -- my people. I knew Mr. Jones was over there off and on. I don't know just what part he played in it. He was more or less representing us in the -- just the scrivener part of the matter, and that's the best I can tell you. I am just not familiar with those particular details.

Q But the Legislative Council was charged with utilizing all of the factors that we talked about before?

A Yes, they were -- this happened when I was not -- the first time that the Board met, it was my understanding that they charged Mr. Bob Johnson, or asked him if he would act as more or less secretary and do the paper work, and Mr. Johnson very graciously consented, and it was -- that was a gentlemen's understanding or general understanding of the whole bunch, that Mr. Johnson was to help with the paper work in the matter, and was to act as secretary to the Board when we were in session, which he did. Now, as far as being elected as secretary, he was not; he was not. But he acted as that. In other words, whenever we needed something to be done, Mr. Johnson was the one who did it, and he was the one that provided the facts of the census tracts, and he was the one, when the lines were drawn, he was the one that took the census tracts and made the description of them and drew the maps and things of that sort. That's the best of my understanding. I wasn't present when all of that happened, but that is my understanding about the matter.

Q I just have a couple of other questions dealing with some other factors we talked about, like community of interests and natural barriers, like highways and the canal, and past elections and all of those things, the Board really delegated that particular application of

these factors to Mr. Johnson's Legislative Council, and whoever else assisted him; is that right?

A No, sir, I wouldn't say we delegated anything to them except the actual doing the paper work on the matter. We -- if you meant -- if you are implying that we delegated our power to somebody else, no, we did not, but if we -- we did call on them to do the nitty gritty, sitting down at the maps and undertaking to try to get these things to come out along the guidelines we laid out, the answer to that is yes, we did.

Q Well, I didn't mean to imply that you delegated your power, but I meant to say when you presented all of these questions of law, didn't you and the Board expect the Council to use them in drawing the lines?

A Yes, sir. Let me say that Mr. Potter and I had several conversations concerning the law, and some of my Assistants had conversations with Mr. Spellings and Mr. Potter, and at that time I felt confident that they understood the cases, as well as they can be understood. I am not going to tell you the Chaves case is just, you know, real clear, because it is not. In other words, the Court has moved some in its position since Baker vs. Carr, but all I can do as an attorney is to take what we think the Supreme Court's

thinking was in that and try to apply it, and they seemed to understand it, and it was my understanding that they understood it, and Mr. McDaniel was over there on one or two occasions, and Mr. Walker was there, and I think Pat Bailey was over there on one or two occasions, and we had a general discussion of the law, and we came so far as the meeting of the minds were concerned with the plan on arriving at what we felt the law was, and if we are right on the law, that is going to be determined.

Q And you have no fixed opinion as to whether or not the new lines in Harris County destroy the community of interests, whatever -- as that term is used?

A As far as I know, they do not. I don't profess to be an expert on Harris County, and one of the things you learn when you run for state office, there are twenty-four metropolitan areas in Texas, and every one of them is unique, and no man can be a specialist in all of them, and Harris County, of course, -- I am not a resident of Harris County, and I have more or less a working knowledge of it, probably as much as any other State politician that doesn't come from there.

Q I have nothing further.

CROSS EXAMINATION

Questions by Mr. Steele:

Q General Martin, I am Cleo Steele, ---

A Yes, sir.

Q --- and I represent the Intervenor in the Tyler case, Taylor Washington, et al.

A Yes, sir. That has to do with the House Reapportionment?

Q Right. First of all, in assisting me for my own personal clarification as to exactly how this whole system works, we start at some point in time in developing a reapportionment plan. I assume that you start with a blank map of the State, or several blank maps, and what have you, and you end up with an approved plan. At what point in time, now, and who is it that is responsible for seeing to it and in drawing the plan and determining what type plan you are going to have for a particular county, whether or not these racial minority groups are being held intact or being diluted or cut down, or what have you? What particular agency or what person or who keeps a check on this particular factor?

A I -- the only thing I can answer to that is the -- I was charged with the responsibility as much as the other members of the Commission, and we are charged with the

responsibility, and we used advice of some staff members, and they are -- had a whole lot more time to read cases and study them, and relied somewhat on their legal understanding.

Q Your own personal staff?

A Yes, sir.

Q Or do you mean the Council?

A That's what I relied on, yes, was my own personal staff; as far as the understanding of the law, that is what I relied on. Like I say, there were several sessions where there was discussion about the matter, and then the other thing that I have not mentioned is the fact that that particular question was -- that seems to be of interest here to the -- I mean, seems to be some question here, was argued before the Supreme Court, and they came back with an answer that was about what we felt was a proper answer.

Q Well, ---

A It was not -- maybe not developed as fully as some people might have liked, but at least it was in that particular case, and we paid some attention, of course, to what the Supreme Court of Texas said about the matter.

Q Do you come in after the plan is drawn and say, "Well, it doesn't look like any racial groupings are split

here," or do you come in at the basic level ---

A Both. We come in at the start of it and lay the guidelines down as to what we understood the one man, one vote rule to be, and how it was carried forward in the Chaves case, and then, as far as the House of Representatives was concerned, what the Supreme Court of Texas had said in cutting county lines and the at large or multi-member districts, whichever way you want to call it, versus the single-member districts. All of that was discussed, and the staff was -- based on that, they began their labors on the matter, and after it was completed -- and let me emphasize this -- maybe this is what might confuse you. If you thought they just brought a map and that I just went to see the map one time, that's not true. We visited them numerous times, and they were over here two or three times with it, and my staff was working back and forth and relaying to us what could be done, and there was lots of little points in the matter, that had to be cleared up in the matter. One little point, the maps were not clear, and we had to abandon it. For instance, where two counties, whether or not they touched each other, and we -- one map, the Land Office showed that they had 30 feet joint boundary, and another map showed they didn't touch each other, and

this type of thing. Those are little things that sound small. They are small, but when you are trying to work with thousands of people and pushing them around and putting them here and there, well, that's what makes it difficult. It is just like a football game; you lose it, and that's it.

Q My question was rather general. Getting to Dallas County particularly, you mentioned earlier you had some contact with Mr. Zann Holmes?

A I do not recall. I might have had a conversation. Like I say, I hate to be that way, but I can't remember it all; but I do recall very definitely having a telegram from Mr. Zann Holmes, and it should be in those documents that were here this morning.

Q Do you know whether you had any contact with any other Black elected officials and Black attorneys in Dallas County?

A It seems to me that there was a couple more, either city or county officials, that wired me, and I am sorry, I do not know their names.

Q Black officials?

A Yes, sir. I was told by -- let me explain how these things are handled in the office, so you will understand. When something like that comes in, my staff doesn't just bring the telegram to me. They pull the

card on the particular person and bring it in, and if I have had contact with them before -- and one of the gentlemen I had not had contact; the other man, I had, but they always ascertain who they are, what their occupation is, and things of that sort. That gives me some idea of how to judge them or what, you know, what -- and that is just the ordinary procedure that we always follow. And if my memory serves me correctly -- and this is just strictly from my memory -- I think there were two other gentlemen contacted me that had some official position in Dallas County.

Q Do you recall what their sentiments were as regards redistricting?

A If I remember correctly, they were opposed to running at large.

Q I see.

MR. McDANIEL: Let me interrupt and go off the record, if I may.

(Thereupon, a brief discussion was had off the record, after which the proceedings were resumed as follows:

Q (By Mr. Steele) You had indicated that you had talked with Mr. Zeno Holmes and two other officials or two other people whom you felt to be holding some official capacity?

A They sent telegrams to me.

Q All right.

A Yes, sir.

Q Do you know whether you had any contact with other Black citizens of Dallas County, such as precinct chairmen or Black businessmen, or just interested Black citizens?

A There was one or two appeared in front of the Commission at the time we had one of the hearings, and I am sorry I do not know what his name was; and I think one of the other gentlemen examining me awhile ago said his name was Roberts, but I couldn't tell you what his name was.

Q Okay. Do you recall what their sentiments were in regard to reapportionment?

A This particular testimony was handled by Senator Oscar Mauzy, and his witnesses were unanimously opposed to the running at large.

Q I see. Okay. Now, realizing the large numerical size of the Black population of Dallas County and the fact that you have there what the Courts would call community of interest grouping, et cetera, did you instruct your staff, or did you staff on its own seek out the sentiment of the Black community in Dallas as to their feeling toward single-member districts, as opposed to multi-member districts?

A Well, I don't know that the staff were fact-gatherers in this particular field. I would have to say that they probably were not. Most of the facts were -- I say most of it, maybe all of it was gathered by the Commission members, outside of the statistical matters, which we testified to, such as census tracts and such as that, that was furnished by the Legislative Council; but as far as the sentiment of the whole or sentiment of a part, or anything of that sort, that wasn't -- that would be -- I don't think the staff got into that particular field.

Q Okay. So that in approving the plan that was ultimately drawn, you and your staff did so, then, primarily on the basis of the statistical information that you got from the voting records, rather than any personal contact with the Black community of Dallas, or with any data coming from the researchers in Dallas County in this particular field?

A Let me say that I heard from various segments up there, and I am certain that some of them were Black citizens, and I talked with any number of people and tried to ascertain what the feeling was, and that was not the-- in other words, the feeling was not the whole picture, but at least that was one of the things we did consider, and, of course, what the other Commission

members had to say about their experiences would have some influence on me. In other words, it is the Commission -- it was a Commission, and the things we did were as a whole, rather than each individual, as far as I can picture it. So, it would be hard for me to explain that to you, except to say that was discussed, and my instructions to the people, so that I can clear your mind up on this, my instructions to them was, when the maps were brought in and we had a map in which the precincts were marked that were predominantly Black -- where the maps came from, I don't know, but it was testified to me -- it wasn't testified, but it was told to me that the Census Bureau figured that out of Washington, and based on that, my staff was instructed -- and I agreed with them after we looked at it, that we were doing the best we could to -- not to either gerrymander for or against the Blacks, to treat them just the same as we would anybody else.

Q So you did have maps that supposedly outlined the predominantly Black areas, and your personal contacts with Blacks in Dallas County was to the effect that they were opposed to multi-member or at large districts?

A Those that you mentioned?

Q Right.
A That was their sentiments, yes.
Q So you adopted the plan with all of this information, I guess, because you were -- you felt that the multi-member district system would be better, or that you objected to their reasoning, or what?
A Well, I -- that is, like I say, that's a lot of going back and trying to get my mental processes, which I can't do. I am sorry. I can't crank up and go back and get those mental processes and tell you exactly what processes I went through, but as I explained to you awhile ago, the sentiment of the people seemed to be that way. That's the way I found the preponderance of the evidence, and the running at large had not had any adverse effect on -- in other words, the Blacks were getting some of their people elected, and I think that in the future that there probably will be more elected. I don't ---
Q All right.
A I just don't see it otherwise. That's the best I can tell you. I felt like it was fair, and fair to all of the people. Now, let me say this, that if you were trying to ask me did I try to make this come out to suit a certain ideology, I certainly did not. That was not our intention, and it was never entered into

it at all. It was not the thing we were trying to do, because the people of Dallas County have got a right to feel the way they want to about anything, except as I stated to begin with, as long as it does not contravene or be in violation of our Constitution of the State or the Constitution as interpreted by the United States Supreme Court. You understand, I am for the Supreme Court interpreting the Constitution.

Q Just a couple of questions. You stated earlier that prior to about ten years -- maybe twelve years ago, there were not Blacks running from Dallas County?

A I don't recall, if there was. There might have been. I just don't remember.

Q In recent years they had educated themselves and begun to hold office in Dallas County?

A I didn't mean to imply that there wasn't qualified people at that time, but they didn't seem to seek office at that time.

Q Are you aware of more than one Black ever holding State office, State legislative office at any one time from Dallas County?

A Do you mean in the State Legislature?

Q Right. Has there ever been any more than one?

A If my memory serves me correctly, your statement would

be true. I think that is a correct statement. I don't recall there being but one during the previous years. I believe one gentleman had an unfortunate accident and got killed, over here at Dawson, and I thought he was a real fine gentleman, and ---

Q He was the only one at the time?

A Yes, sir; and he was killed, and then later on, Mr. Zane Holmes was elected, and he is making a real fine Representative.

Q Do you think if Dallas County were reapportioned on a single-member district basis, that there would be more than one Black?

A That would be too speculative for me to answer. I am sorry. I can't answer that. I just don't know too much about Dallas politics, except to say that if -- I would just get off into "if this" and "if that." I am sorry. I don't know.

Q Considering the number of Blacks there, do you think there are enough there to have more than one district on a single-member basis?

A If you just set out to try to create some Black districts, well, certainly, but that's not -- that's not -- that would be the reverse of what we are talking about, and I wouldn't be for that, either. I mean, while that may be poor politics to say that,

that's why I am trying to follow the Supreme Court.

Q No further questions.

CROSS EXAMINATION

Questions by Mr. Irvin:

Q I am Walter Irvin, Mr. Martin, ---

A All right, sir.

Q --- and I am representing Intervenors in the Tyler case.

A Which Intervenors?

Q Mr. Washington, et al.

A All right, sir.

Q I would like to talk about perhaps some of the things that you related earlier this morning, and things that you thought should be considered in drawing the House district lines. Speaking in particular to two counties, Jefferson County -- are you familiar with Jefferson County?

A I know Jefferson County. I have been in Jefferson County several dozen times. I am not as well-acquainted with Jefferson County as I am some other counties and, to be honest with you, Jefferson County, I have never been in too much, but I am vaguely familiar with it, enough that -- let me put it this way: I am as familiar with it as some other State politicians. I have never lived there, and I have never practiced --

I have tried two or three lawsuits down there, and that has been my experience in Jefferson County.

Q Did anyone from the Jefferson County area or the county itself contact you regarding their district lines, et cetera?

A I was in Jefferson County at the time that the matter was under consideration by our Board, and I was in Beaumont and in Port Arthur, and I visited with some of the Representatives down there. Now, are we talking about Representative Districts?

Q Right.

A Unfortunately, they were in a bad situation, in that they were going from three Representatives to two Representatives, and I don't recall of any individual that I talked to concerning those Representative Districts that didn't say that they would prefer the Representatives to run at large, rather than to have the Commission choose the line and eliminate one of them. In other words, the only way you could do it would be to put two Representatives in the same district, and they did not -- the people down there that I talked to -- and I guess I talked to several dozen about the matter -- they all had that particular opinion about Jefferson County. They just didn't feel like that the Commission should do that, since they

only had two, that they should run at large; and the same was true of McLennan County. They only went to two, and they -- the ones that talked to me, that's the way they felt about the matter. That's the best I can tell you on that. I don't recall anyone -- there may be some letter in there. I have not -- I haven't gone through those. There may be some letter in there from somebody from Jefferson County stating otherwise, but the ones that I talked to were of the other opinion.

Q I am more trying to get at the line of what is, in my opinion, the rational way in which the lines that county and the adjacent counties were drawn, and to correct you, I think Jefferson County now has three places.

A Well, they went over -- we had to go over and take -- we had to shuffle around some.

Q Shuffle around there, but ---

A Yes. In other words, let me put it this way, so you can understand it: That area did not grow as fast as the rest of the State, and consequently the area lost a Representative.

Q Jefferson County lost a Representative?

A Yes, sir. It is my understanding, if my memory serves me correctly, they -- I think they went back a little

bit in population. Like Waco, they went back a little bit in population. The rest of the State went from nine million to eleven million, you see, and this created a situation in which they would have parts of -- in other words, they would have two Representatives and a part of another one, if I am not mistaken.

Q Well, did you not say this morning or testify this morning that some of the things that the Board considered was the compactness, the governmental lines, that is, the county lines and things like this?

A We have to, under the Supreme Court decision, we would have to consider the county lines, yes, sir.

Q Well, what did the Board consider in -- well, let me back up a minute to ---

A Yes, sir.

Q --- to correct you. Looking at the 1970 census data, Travis County, for example, has 235,518 people; Jefferson County has 244,773; Travis County has four places; Jefferson County has three. But what I am getting at is, what did the Board consider, or what-- tell me your views on this -- in drawing the Jefferson County lines to take certain census tracts out of Jefferson County, particularly those areas which, from my studies, suggest that they are areas where there is Black population, and lapping them across the Pine

Island Bayou over into Wharton County to the north, and then to the south, parts of Jefferson County, parts of Port Arthur and that area, goes over into the Orange census tract?

A I'll do the best I can to explain that. I don't know that I ever had a real close discussion with any other Board member, Commission member, over that particular area down there. The only thing I can tell you is that when you are working with Orange County, it is a very difficult county to work with, in that there is -- there is no way -- in other words, you have just got one direction in which you may go, and the people who worked with it felt that this was the most feasible way to do it. I am not saying it is the only way to do it. That was the feeling that I received. In other words, that was what I was informed, and that was the best that I could -- after I looked at it, that was the best that I could see that could be done.

Now, it could be, by disregarding the rest of the State, you could draw the lines differently, but in order to make it work out with the East Texas area, and East Texas generally lost population; South Texas gained population, but Jefferson County is not -- what I wouldn't call South Texas. Consequently, there had to be some Representatives taken out of there, and

this is always one of the most difficult things to do, is trying to work with an area where you have losing population, and that is what East Texas was faced with. In other words, Jasper County and Newton County, and I think Hardin County, gained a little bit, but San Augustine and Shelby and all of those counties up and down the State there lost population, and there had to be some Representatives taken out of there.

Q But under the Supreme Court and the State Constitution guidelines, also the community of interests concept, that is to be considered, and you suggested this morning that that was of ---

A That was one of the -- I didn't say that was a paramount guideline; I said one of the guidelines we looked to was the community of interests, and the -- I am sorry. I can't give you any more information than that on that particular spot on the map, because I am just not that conversant with that particular spot. I don't know enough about it. I do know that the road goes out north of there into Hardin County, and the people generally move in that direction, and they move generally in the direction toward Liberty County, and that is -- in other words, the sprawling out has taken place those two ways, because that is

the only two ways they have got, unless they want to go over into Louisiana, and the swamp between it and Louisiana would be in there. That would be in another state, anyhow, so it wouldn't be germane to our discussion.

Q Well, let me get on to some other points briefly here.

A All right.

Q Your first statewide office, your first quest at statewide office was for the Attorney General's Office; is that correct?

A No, sir. I ran unsuccessfully -- I guess a politician shouldn't own up to that this afternoon, but I ran unsuccessfully for Lieutenant-Governor in 1962, and I was defeated by Mr. Smith, who was elected Lieutenant-Governor in the primary. I didn't run in the general election, of course.

Q Now, so, then, your first successful attempt was --

A Attorney General, in 1966.

Q --- Attorney General in '66. All right. Prior to -- just for the record, how many people -- how many -- are there any Blacks, or were there any Black residents in your Senatorial District?

A There is a few. I had ten counties in my district, and there were five counties that had practically none. If you want me to name them, I will name them,

and ---

Q Let's not ---

A Well, there are five counties on west. They are ranching counties, and there were practically none. There are approximately -- Oh, I would say five, five per cent, something like that, in the other five counties. The three major counties, it would be about like that. The population has -- the Black population has gone down. They moved to the city, mostly. That was about the makeup of my district when I was in the Senate. The last session that I had in the Senate was in 1961 prior to my running for -- in other words, instead of running for re-election, everybody had to run that year, I ran for Lieutenant-Governor, and was defeated, and I was appointed Secretary of State by Mr. Connally.

Q Would it be safe to say, then, that while in office as a State Senator, you never had to quest or seek out Black votes?

A No, sir, that wouldn't be fair to say that statement. There were Black voters in my district, and I received a very fine Black vote. The fact of the business is, my campaign manager among that segment is the present pastor of the Ebenezer Baptist Church here in Austin, and I have a lot of friends that come

from there, and they were, I guess you would say I received as much support as anybody. I didn't get a unanimous vote, by any means, but, then, I did get good support from them, and I sought their support.

Q In running for statewide office, in your opinion as a politician, is it -- does the Black vote in Texas really count? I mean, does it make any difference?

A Oh, yes, sir. I wouldn't question that, because any race that is closely contested -- and I am talking about now where both sides come up with enough money to operate, you are going to find that less than one per cent is going to be the dividing line. You very seldom ever see more than two per cent, and four or five per cent is a run-away. So, I couldn't tell you that it is not, because it is. It is a factor, and most candidates seek their support.

Q Now, in the 1966 election, where you were successful for -- in the Attorney General's race, did you run unopposed?

A Oh, no, sir. I had a very vigorous campaign. I had a first primary, and then I had a second primary, and I didn't have much general election candidate, if that's what you mean.

Q That's what I mean.

A I had a candidate in the general election, but he

didn't do any work.

Q Just for the record -- maybe I am appearing ignorant, but are you a Democrat?

A I certainly am. I have never voted anything but the Democratic ticket in my life.

Q Did you carry the Black vote in the '66 election?

A In the second primary ---

Q In the general election?

A Sir? In the general election?

Q Yes, sir. Did you carry it in the primary?

A In the primary, it was split. There were three of us in the primary, and it was split up. Right offhand, I can't tell you what percentage it was, but it was split. I carried some areas, and my opponents carried some areas.

Q But you did carry some areas?

A I had a campaign group that worked with me, and we did our best to get some support from the Black people.

Q Did you carry Dallas County?

A Yes, sir, Dallas County was one of my star counties. Let me say this: I carried Dallas County in 1962 in the Lieutenant-Governor's race, and there were five running. I have always carried Dallas County.

Q If you were to wear a label, these labels that they pin on party candidates -- I don't think they would

pin one on a Republican, probably, but -- yes, I guess they do in national elections, Liberal Republicans, but which label would you ---

A It would be almost impossible to label me. I was considered -- the only thing I could say would be what -- you know, you have got your character and your reputation, and your character is what you really are, and your reputation is what other folks say about you. I would have to tell you what other folks say about me, and when I was in the Senate, I was considered a Moderate. I was author of the Old Age Assistance Amendment, the Medical Care Amendment. I was the author of the Lobby Control Act and the Youth Council Act, the Parole, Adult Parole System. I was fixing to tell you, I was the author of all of those, which were not entirely pleasing to quite a few of my Conservative friends, but on money matters, I have been -- when I was Chairman of the Finance Committee, well, I was considered a pretty tight-fisted fellow about giving out the public's money. So, that was what I was tabbed. In this office here, it is hard, and it is more or less like a judicial office; it is hard to say what I am, and I have never seen -- maybe you all have -- I have never seen the newspapers call me what I am since I have been in the Attorney General

Office. The only thing I can say, I have apparently pleased most of the folks, because I don't have any opponent at the present time.

Q But would you put -- let's place an arbitrary label on yourself now.

A I am sorry; I wouldn't do that at all. In the particular position I am in, I try to follow the law as it is, and let the chips fall where they may, and as far as labels, I really don't know what that has to do with the lawsuit, except I will say that I have been a Democrat all my life. I have never supported anything but the Democratic ticket, and I will continue to support the Democratic ticket, and as far as the vote goes ---

MR. LUNA: That is a good enough label, General.

A --- I cut it right across -- in other words, I cut it across the board. I got as many votes -- well, you take a county and look at the returns in the last four years, I got about as many votes from one section as I do from another section.

Q Well, the reason for the last question -- and I apologize for going astray on that -- but earlier this morning you talked about things that you considered in drawing up the plan for Dallas County?

A Yes, sir.
Q And you talked about the election returns for the last ten years, the pattern of Black voting in the last ten years, and the preponderance of the evidence?
A Pardon me; excuse me, but I was talking more at that time -- I believe the conversation was more about Republican and Democrat, and that was what I was calling election returns. I don't have the exact election returns brought forward on the Black vote at that time. If I misled you, I am sorry.
Q You later testified in a question put to you that you felt that the scheme, apportionment scheme for Dallas County, was fair to the Blacks?
A Yes, sir.
Q But you later testified -- well, you testified this morning that you thought the apportionment scheme for Dallas County was fair to the Blacks?
A Yes, sir.
Q But did you not also make a statement that Blacks tend to vote Liberal?
A Well, actually, that was really -- I may have made that statement, but, then, the Blacks have in the last -- that was in the earlier elections. At the present time, well, they are not showing any real set pattern. They seem to go for the man. Now, when

it gets between Democrats and Republicans, they vote Democratic, but the other, I will say that during the last few years, they vote more for the man. They are getting more and more that way all of the time. If I misled you, I am sorry.

Q One final question: As a politician who has served the State of Texas for -- I think you said twenty-five years?

A Twenty-four years.

Q Twenty-four years?

A I mean, this next year -- twenty-three years right now.

Q Would you say that Texas as a whole, in comparison with the knowledge that has been compiled by the various Commissions, National Commissions and even State Commissions, would you say that it is still -- what would you say is considered -- what would you say is considered a State, in the southern mentality, since that is -- things that you know, the de jure type of laws affecting Blacks, would you say Texas is still considered in that vein, or would you say Texas is a State that you separate from the South altogether?

A Oh, I very definitely would say that it is separated from the South, and since I have been in this office

and have seen the integration of the schools, there has been a one hundred per cent success of integration of schools in the rural areas of Texas, where you are supposed to have your so-called red-necks, and you are not having any trouble in the rural areas at all. They go to the same schools; the only trouble we have, as I mentioned this morning, at all is the busing matter, which is not unique to Texas. That is in Michigan and other places, too. And in my humble opinion, I think this will be straightened out in a couple of years, a year and a half. Let's hope it is.

Q Well, let's go back. Go back prior to the 'sixties -- I mean, going on back through the history of Texas since you have been able to observe and make an analysis of the situation here in Texas, and comparing it with the rest of the country, would you say Texas had a southern mentality?

A Well, I couldn't answer that a hundred per cent. I would say that the east part of Texas, the one hundred miles nearest the Louisiana and Arkansas borders, had more of a flavor of the old South, and the rest of Texas -- and certainly the immigrants to Texas, and, after all, Texas has gained more immigrants than we have births -- they have tended to be part of the

West, and their mentality was turned toward the West, but the -- so far as East Texas is concerned at the present time, to go back to answer the question I had answered previously, I think that particular feeling has changed considerably in rural areas of East Texas, and, after all, East Texas is rural. There are no big cities in East Texas. We are talking about Tyler and Longview, but they are not very big cities; but that is my feeling about it at the present time. You see, I am not a sociologist or anything. I don't qualify as a sociologist, and I am in a field that I am unqualified in, and when this is read to the Court, it will probably be objected to, but I am just doing the best I can to try to answer the questions.

Q That's all.

CROSS EXAMINATION

Questions by Mr. Eason:

Q General Hartsfield, I am Nathan Eason, from San Antonio---

A I didn't get your last name, sir.

Q Eason, E-a-s-o-n.

A Yes, sir.

Q --- and I represent Van Archer and others.

A Yes, sir.

Q Mr. Archer is the Republican Chairman in Bexar County.

A I have met him, yes, sir.

Q While we filed our complaint on both the House and the Senate, I believe that we have beaten this House situation pretty thoroughly, and I know we are all getting tired, and I will try to make mine as short as I can.

A Mr. Eason, I will give you as much time as I did the others. I am feeling good right now.

Q Thank you, sir, but I will confine most of my interrogation in regard to the Senate.

A All right, sir.

Q Now, in order to capsule some of the former testimony, as I understand, you did use certain guidelines whereby you tried to make these districts contiguous and compact, and also that you weighed the ethnic and the political and racial -- I don't know that you testified that you did political, but the ethnic and racial segments, along with the rest of it, in order to make it reasonable, fair and equal representation; is this correct?

A Yes, sir; and I did mention the political.

Q Did you?

A Yes, sir.

Q I was going to get into that.

A Yes, sir, I did that earlier, when we first started this morning, and they were not interested in that, and it hasn't come back up since.

Q Since I represent a political entity here, well, naturally, I am interested in that, and also you were guided by the community of interests and local problems aspect of it. General, I am going to hand you a Texas Senate District map, which I believe came from either your office or the Secretary of State's Office, or Mr. Johnson's office.

A I believe this looks to be the product of Mr. Johnson. I am not certain, but it looks that way to me, sir.

Q Now, Mr. Martin -- General Martin --

A That's all right.

Q -- I am primarily concerned with District 21, Senatorial District 21, and if you will refresh your memory as to that -- and, of course, Bexar County is divided into Districts 19, 26 and a portion of District 21.

A Correct, sir.

Q Also, I know you are more familiar, probably, with Dallas County and other areas where you formerly resided and campaigned, at least more extensively than you have in Bexar?

A That's right.

Q You are also familiar, I suppose, with the north and the northeast part of Bexar County as to the political aspects there?

A I am pretty familiar with the north part of Bexar County, because I have -- I visit friends and things there, but the northeast part, I am not as familiar as I should be, and the south, I have a -- well, it is just not -- I am not an expert on it. I can generally have a general idea of it as a state official, but I don't have a close judgment of it.

Q Well, are you aware that the northeast part of San Antonio has a Republican justice of the peace and a Republican county commissioner, and it is very conservative, and a very strong Republican area; are you familiar with that?

A No, sir, I'll be honest with you, I didn't know -- I know that there was a Republican -- it seems like to me it was a Republican county commissioner, ---

Q Yes, sir.

A --- and there was a -- I met him, and he seems like a very fine gentleman, and there is a -- the part of the county is Conservative in the north part of it.

Q Yes, sir, Alamo Heights, Terrell Hills, Olmos Park?

A Well, I would have a pretty good knowledge of Olmos

Park, because we have had some litigation there, and I am acquainted pretty well with Olmos Park, ---

Q Yes, sir.

A --- on account of that highway situation we have in there.

Q Yes, sir. Still have. And this is a very strong Republican stronghold?

A I would certainly agree with you on the part that Olmos Park is a Republican stronghold, yes, sir.

Q Do you know Bob Strickland?

A I know him -- the Bob Strickland, you are talking about, that used to be in the Legislature?

Q Yes, sir.

A Yes, sir.

Q He is our Republican J.P. out there.

A Well, I have known him. He used to be a Democrat when he was in the Legislature.

Q Yes, I know that, too.

A I have known most of the Representatives you have had through the years. One of my closest friends, of course, was the Senator from down there.

Q Ozzie Lattimer?

A Ozzie Lattimer died.

Q I went to his funeral here about six weeks ago.

A That's right. A fine man.

Q Yes, sir. General, looking at this map, do you consider Senatorial District 21 as being contiguous and compact?

A One thing I could say, San Antonio has always presented a unique problem. In the Senate, I was on the Senate Committee that reapportioned the Senate in 1951, and also in 1961, and both of these -- this is about the same result that was achieved at that time, and in my opinion, that is about as compact as you can get it. I realize that it is -- it looks that way, but on account of this situation that Texas has in Senatorial Districts, you will notice that you have to have one long, narrow district. This one happened to be a little wider than usual, because it used to run all the way from Dallas. The Congressional Districts have to be the same way, because your population runs this way. The population runs this way, and that is the result that has been achieved in -- nearly every time anybody has tried to figure it. I am not saying it can't be done, but to me that is about as compact as you can get it.

Q In other words, let me ask you this: Do you feel that there is a common interest between the northeastern part of San Antonio and the people in Starr, Jim Hogg, Zapata and Duval Counties?

A I would say that there is quite a bit of interest, because quite a few of those people have ranches and live in San Antonio, and go out there, and it is a -- in other words, that is the area they come to when they come to San Antonio, and the immigrants into San Antonio from that area is terrific. I don't know how many; I have no figures on it, but I do know that they are the same type of people that I would -- and I am just giving you my best knowledge of it -- the same type of people that you have in the ranching areas in there.

Q And you are specifically referring to the northeast part of San Antonio, rather than the southern part?

A Oh, yes, I am talking about the northeast part. Those ranchers move in there and -- get a little old and retire and come off the ranch and that's where they move to, most of them.

Q Well, of course, we could go on and on about how this could have been done, but wouldn't the same thing be true of the people of Hinkle, Gillespie, Comal and counties up there immediately south of there, and much more compact, and really more contiguous than when you go completely around two jurisdictions, to make this contiguous, this same thing would be true of the common interests, and would be more so for the

people of Comal, Kimble and Gillespie, wouldn't it?

A Well, to some extent, you have more of a German influence in those counties, and they are more German-type people. While the San Antonio area itself was dominated by the German people, that's not true to much extent. Most of the streets are named German, but the German people don't dominate San Antonio.

Q In other words, it is your testimony, then, that you figured that that was as contiguous and compact a district as you could have made in that area?

A Well, you have to take that in connection with the rest of the State. I am not saying it couldn't be improved on at all. I am just saying that as a whole, when you take the whole map, in trying to fit it all in together, it was as good as I could do. I'll put it that way.

Q But you are speaking of the whole State of Texas. You are not speaking of just the San Antonio area?

A Yes, sir, that's right, but it's just like a row of dominoes; you have got to have them all fit together; just like a jigsaw puzzle, it has got to fit together, and these counties have to go somewhere, and that was--the Commission, what they came up with, and I signed the report, and I stand by it. I think it is about as good as we could do.

Q Speaking of that, I believe that you and Governor

Barnes and Calvert were the ones that approved the Senatorial report; is this correct?

A Yes, sir.

Q Did any of the other members of the Board, or the Commission, offer dissent regarding Senatorial District 21, if you recall?

A Mr. Hatcher, as far as I can remember, offered no dissent, and I did not -- his vote -- his refusal to sign the report was a surprise to me, and I think I related here this morning, as far as Armstrong was concerned, I didn't know that he was unhappy with several of the things in the report until he came to my office the morning, or the day that it was finally signed, and I do not recall him mentioning San Antonio specifically, and, as far as I know, Mr. Armstrong didn't mention it to me. I can't recall that he did. I am not saying he did. I don't recall it, if he did.

Q Do you recall whether or not there were alternate plans submitted concerning this district down here? When I say "this district," I mean 21 and 19 and 26.

A There were some alternate plans submitted, but, to be honest with you, nearly all of the plans that were submitted that were brought to my attention, they undertook -- and when I say "they," I mean those who

presented it, so you will know who I am talking about, undertook to try to work out Bexar County as just a complete unit, and the plans that were submitted, the Commission didn't see fit to buy them, and they didn't fit in with the rest of the State. That's the best I can tell you on it. They just didn't fit in with the rest of it, and this was one of our -- I guess one of the most time-consuming factors we had, was the Representatives and Senators, and we were talking about the Senate at this time, so we will confine it to that -- Senators coming in either with a plan all worked out how it would take care of their Senatorial District, and then I would say, "Well, what about -- how are you going to fit this in here with this other, this area right over here?" And they would say, "Well, that's your problem. That's your problem. That's your problem. I want my District this way," and that was the way Bexar County was done, and the same result. It was not changed -- let me say this: The plans that were submitted to us were not as drastic a change as it was in some Senatorial Districts, as to what the Senators themselves or some of the other people that brought plans in here, as what they had provided.

Q Now, along that vein, Senator Bernal's and Senator

Kothmann's weren't changed radically at all, were they?

A Let me say this, that they were not changed -- when you use the word "radically," that is a relative term. Senator Bernal, after it was over with, expressed to me that we had ruined him. I don't know whether he approves of it or not. Mr. Kothmann, I have never heard him say one way or the other.

Q Well, as a matter of fact, didn't you have certain correspondence, and were actually approached by certain people concerning both Senator Bernal and Senator Kothmann?

A Yes, sir, I had several people discuss the Bexar County Senatorial situation with me. Yes, sir, I sure did.

Q And is it your testimony, then, that Senator Bernal is not pleased with this?

A To the best of my knowledge at the present time, he was not. I don't know. I shouldn't say that. He has not expressed himself to me one way or the other, but I just heard by the grapevine that he didn't like the way his districts was put together.

Q Senator Connally was, of course, the Senator from the "Down Under" District, most of which would now be 21?

A Yes, sir.

Q And he is not running for the Senate any more, as I understand?

A No, sir. If there was a letter came from him, I don't recall it, and I know he never did speak to me personally about it, or anybody in his behalf. As far as I know, he took a hands-off attitude about the Senatorial District down there.

Q Back to your testimony this morning concerning Dallas County, as I recall, you used the words that you based your decision -- this really hasn't got an awful lot to do with it, but you did use the words "based on the voting record and fairness," by winding up with a multi-member district, and you thought it was fair?

A Yes, sir.

Q And based on the voting records, you thought it was fair. Now, let me ask you this: Did you examine the voting records of Northeast Bexar County, North Bexar County, Northeast San Antonio, prior to the approval of the plan?

A I can't say I did. I do remember looking at the voting record of Bexar County as a whole, but I don't -- no, I can't tell you that I looked at any particular segment of it. I am sorry, sir. I just did not.

Q Well, I don't want to use the word "gerrymandering," but this obviously goes around the two districts we

discussed of Senators Kothmann and Bernal, to do a flip-book in here and take in this particular voting stronghold of the Republicans. It would appear to me that if anyone looked at the voting records, that they very conscientiously or arbitrarily grouped the Republicans of Bexar County with the Mesquite Tree Jurisdiction from Starr County northward, to cover Duval, Jim Hogg, Webb, McMullen, et cetera, which I can't see have any common interest other than, as you pointed out, the possible migration of ranch people into the San Antonio area, which, of course, I admit took place, not only from this direction, but from the various other directions; but it would appear to me that the dilution of the voting of my clients and the very Conservative Democrats and the Republicans in that area has certainly been brought about by this Senatorial District 21, but it is your testimony that under all of the facts that you had present before you at this time, that this was the -- I don't want to put words in your mouth -- but, maybe not the best possible, but the best map or plan that you could have gotten together at this time?

A You have testified here for about five minutes, and the only thing I can say is, to try to comment on it, would be that it was not the intention of me, nor do

I have any knowledge that it was the intention of any other member of the Commission to be unfair or to treat a political minority in an unfair method, and, to be honest with you, until you presented it to me here then, I had not been aware that any of the people felt that way about it, and I don't -- I really disagree with the facts about the matter, sir.

Q In other words, you ---

A I am not mad at you about it; I am just saying the facts don't appear to be exactly the way you put them.

Q Well, perhaps I am in error.

A Well, I am not saying I am perfect, but I am just saying that you are asking me for an opinion, and I am doing the best I can to give you my opinion, and that was my opinion, that I think that Bexar County as a whole was treated fairly.

Q Let me back up just a moment, please.

A All right.

Q Were you aware that the northeast section of San Antonio or northern section of Bexar County was heavily Republican, as compared with the balance of Bexar County?

A Well, I was not aware that they are Republican. They vote for -- part of them vote for Mr. Fisher, who is

a Democrat, and the only thing I can say is that I was aware that they are -- have a Conservative voting record. As to the party affiliation, I am not that well acquainted with Bexar County as to the precincts and who the chairmen are and how they vote, and I am just not that well acquainted with it. I am sorry I am not, but I am just not.

Q Did you have any correspondence or any approaches from any witnesses or people that testified or appeared before you concerning the different alignments for Bexar County District 21?

A I don't recall any right now. I am sorry, sir. I am not saying there weren't; I just don't recall right now.

Q And it is your recollection at this time that Senator Barnal was quite disturbed about this?

A Oh, he did not come to see me, but he had one or two people come to see me, and that he was disturbed about it, and that's the extent of the thing. Mr. Barnal, as I -- if he has talked to me about the matter -- well, I am certain he did not. I don't recall ever having a conversation with Mr. Barnal at all, and the information that I received that he was unhappy with his district now, whether that is true or false, I don't know. I am just telling you

that's what I have heard. He has not told me that.

Q Do you recall whether or not you have had correspondence from various people in San Antonio asking you in your considerations to try not to disturb the Senatorial Districts of Senator Bernal and Senator Kothmann?

A I can remember receiving correspondence, I believe, from both of them. I think I received more correspondence from Mr. Bernal's friends than I did Mr. Kothmann's friends. Now, Mr. Kothmann -- you didn't ask me, but I will volunteer to tell you Mr. Kothmann did talk to me about his district, and he wanted the lines somewhat different from what they were drawn, but ---

Q Along the line of protecting his then present District; would that be a fair statement?

A I am sure he was after his own self-preservation. I don't think he was trying to hurt himself, but that was a -- I don't -- for the life of me, I couldn't tell you what -- how he wanted it changed. I really don't know. I couldn't tell you right now, but I know that Mr. Kothmann did talk to me about the matter, and he visited me about that particular matter, and he named some streets and things like that, which did not mean too much to me, and visited, I would say, three to five minutes about the matter, and that is the only

visit I had from him. I think -- and the record would show -- and I think I received some letters in his behalf from people from Bexar County, but I am not real certain about that.

Q Did anyone, if you recall, ---

A Uh-huh.

Q --- ask the suggestion of come up with the plan wherein Bexar County and North San Antonio would be combined with the Lower South Texas counties?

A To be honest with you, I do not recall anybody presenting a plan that -- it could have been -- I am saying -- I am just doing it from my memory, and I want the record to show I don't have anything in front of me; I am just doing it from memory. I don't recall receiving that type of a map. I may have received such, but I do not recall it. If I did, my attention was not called to that particular section of Texas, is the only thing I can say.

Q One further question, General. I will ask one more. State, if you recall, who drew the lines concerning District 23 that encompassed this portion of Bexar County with them.

A The only thing I could say, that the staff drew the lines in. They were drawn appropriately the way you see them there the first time that I saw the map. Now,

let me back up and say the original maps, as they were first started, left out the major cities, the four major cities. They did not include them. Then they put Tarrant County in pretty soon, because Tarrant County, if my memory serves me correctly, came out pretty well even, with two Senators, and so they just put it in, and it was drawn.

Q Just drew a line?

A Yes, it is my recollection their population just fit, and so Tarrant County was laid aside, and then the other three counties, at the various stages of working on them, they were gradually drawn in; and I could not tell you who actually physically put the lines in as to Bexar County; I don't have that information. If I did, I would be glad to tell you.

Q All right. When you say "the staff," to whom -- are you referring to Mr. Johnson's office, or are you referring to Mr. Spellings?

A Right; Spellings.

Q When you say "the staff"---

A No, I don't know which one of those it was that did that. The map that was brought to my office was brought by Mr. Spellings. Whether or not he drew it, I do not know.

Q When you say "the staff," you are referring to Mr.---

A I am referring to the auxiliary people who helped us with the drawing of the lines and --

Q That is Mr. Spellings and --

A And Mr. Bob Johnson and Mr. Pecher, and I believe they had a young fellow by the name of Hoover, who was really the best man, when I was working with them, he was the best man on the adding machine and computer of anybody.

Q Thank you.

A Anyone else?

CROSS EXAMINATION

Questions by Mr. Greenberg:

Q General, my name is Robert Greenberg. I represent the Plaintiffs in the Harriott case in Dallas. Would it be correct to say, sir, that the guidelines and the basis that you, as a member of the Redistricting Commission, used to finally approve or sign the House Plan that was signed was used as to all of the counties in the State, all of the guidelines were followed the same way -- and I am now including the counties, like Travis, and counties that have not previously been mentioned; would that be a fair statement?

A Yes, sir, it was our instructions and my understanding, and I believe it today, that the same guidelines

were used for all of the legislative districts, and I can go back and repeat them, but I have repeated them several times.

Q No, no.

A Those guidelines were used, and it was -- to my knowledge, I didn't know of any deviation from them, and when we got through, each member of my staff agreed that the guidelines had been in their minds, and they were satisfied with it.

Q Thank you.

CROSS EXAMINATION

Questions by Mr. Luna:

Q General, my name is Earl Luna, and I have just a few questions I would like to ask.

A All right.

Q I represent Roy Orr, Chairman of the State Democratic Executive Committee. In drawing the lines for the House of Representatives, or the Senate, for that matter, General, was there any intention on the part of any member of that Board to inflict any discrimination against any group, or cast favoritism toward any group?

A No, sir. The staff was specifically instructed otherwise. That was one thing I wanted strictly

understood, that the -- if there was anything punitive in this bill, it was certainly unintentional, because it was not my intention to penalize anybody or be punitive to anybody.

Q Since the bill was drawn up, you have had a number of weeks to reflect on it and reconsider it?

A Yes, sir.

Q Having reflected on it and reconsidered it, are you still of the opinion that the bill not only was not intentionally drawn, but does not result in any discrimination or favoritism toward any group, but, on the other hand, is a fair and impartial bill?

A Yes, sir, I will agree with that. I may have received one or two letters of complaint, and I have not -- again, I haven't gone through -- these other gentlemen had the privilege, but I haven't -- in other words, there has been no protest mail come to my desk about the matter, and neither have I been approached by people grabbing hold of my lapels and giving me the mischief about the matter, and I can't account for that except to say that they either -- well, I just don't know. That's the best I can do, is just give you the facts.

Q Now, you used the term this morning that political considerations were used in drawing it. By that, did

you mean that these are lines for political offices and, therefore, it has to be politically fair to all persons?

A That was the way I used the word, and I hope I did not any time -- the use of the word "political" to mean that I was trying to gain advantage or some group gain an advantage over another group.

Q Political fairness, in other words?

A That's right. I was using the language of the Chavez case when I used that, in just -- in a thing of this sort the ultimate decision on quite a few matters has to be what we call political decisions, and that was what I was using it, in that particular sense; but it was a -- which is, in effect, most of the reapportionment bills are of that kind, yes, sir.

Q Now, General, if you draw a bill, if you just had to consider one county -- if, for instance, Dallas County, the way it is broken up into single-member Senatorial Districts, if you only had to consider that county, you could get them a whole lot more compact and square, or round, than if you had to consider the whole State, could you not?

A Yes, sir; and then if the Census Bureau -- and this probably is not exactly responsive to your question, but I wanted you to know -- if the Census Bureau,

since they are a dominant feature of this whole thing, if they would take more pains to create better census tracts, it would help us a whole lot. When you create a census tract with zero population, and you have got another census tract next to it with 13,500 population, and they are all in different kinds of shapes and forms, it is sort of like trying to build a house out of irregular-shaped rocks, and it is hard to do.

Q There is no particular form used by the Census Bureau in forming the census tracts?

A If I might just say so, I would say it makes no sense, the form of some of the census tracts.

Q Very irregular?

A Yes, sir. I guess there must be some reason, but I don't know what it is.

Q When you need to add some more population to a district, the only way you can do it is by taking these irregular census tracts, and adding it on like that?

A That's what makes it difficult. You put your finger right on it. That's what makes it difficult.

Q That's all.

MR. CUNNINGHAM: May I reserve mine until the time of trial?

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MR. McDANIEL: That's what I am going to do.

Crawford C. Martin

SUBSCRIBED AND SWORN TO BEFORE ME on this the _____day of _____,1972.

Notary Public in and for Travis County, T e x a s

002

REPORTER'S CERTIFICATE

THE STATE OF TEXAS }
COUNTY OF TRAVIS }

I, Barry L. Hunt, a Notary Public duly commissioned and qualified in and for the County of Travis and State of Texas, do hereby certify that, pursuant to notice, there came before me on the 27th day of December, 1971, at the Supreme Court Building of the State of Texas, in the City of Austin, Travis County, Texas, the following named person, to-wit, CRAWFORD C. MARTIN, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath, and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, and that the said deposition was thereafter to be submitted to the said witness to be by him carefully read over and subscribed and sworn to before any Notary Public, and thereafter returned into Court.

I further certify that I am neither attorney or counsel for, or related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee

REPORTER'S CERTIFICATE - (Cont'd)

of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, this _____day of _____, 1972.

_____
Harry L. Wear,
Notary Public in and for
Travis County, T e x a s

My commission expires June 1, 1973.

IN THE UNITED STATED DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL,
Plaintiffs,

VS. NO. A-71-CA-143

BEN BARNES, ET AL.
Defendants.

DIANA REGESTER, ET AL.
Plaintiffs,

VS. NO. A-71-CA-143

BOB BULLOCK, ET AL.
Defendants.

JOHNNY MARRIOTT, ET AL,
Plaintiffs,

VS. NO. A-71-CA-144

PRESTON SMITH, ET AL,
Defendants.

VAN HENRY ARCHER, JR.,
Plaintiff,

VS. NO. A-71-CA-145

PRESTON SMITH, ET AL,
Defendants.

..*.*.*.*.*.*.*.*.*.*.*.*

APPEARANCES:

STUART NELKIN, Esquire, and
DAVID BERG, Esquire,
Appearing for Curtis Graves, et al;

DAVID R. RICHARDS, Esquire,
Appearing for Diana Regester, et al;

ROBERT M. GREENBERG, Esquire,
Appearing for Johnny Marriott, et al;

MICKEY McGUIRE, Esquire, and
NATHAN W. BASON, Esquire,
Appearing for Van Henry Archer, Jr.;

WALTER IRVIN, Esquire, and
CLEO STERLE, Esquire,
Appearing for Intervenors Washington, et al, in Tyler Case;

E. BRICE CUNNINGHAM, Esquire,
Appearing for Intervenors Conrad, et al;

ED IDAR, JR., Esquire,
Appearing for Intervenors in Tyler Case;

SAM McDANIEL, Esquire, and
AL CURRY, Esquire,
Appearing for Defendants;

EARL LUNA, Esquire,
Appearing for Defendant Orr.

..*.*.*.*.*.*.*.*.*.*.*

DEPOSITION upon oral examination, of the witness, BOB ARMSTRONG, taken on behalf of the Plaintiffs, in the above entitled causes, wherein the above mentioned persons are the Plaintiffs, and the above mentioned persons are the Defendants, pending in the United States District Court, for the Western District of Texas, Austin Division, before JACK D. SYKES, a Notary Public in and for Travis County, Texas, on the 28th day of December, A.D. 1971, in the Supreme Court Building, Attorney General's Offices, Austin, Travis County, Texas, between the hours of 3:45 o'clock P.M. and 6:00 o'clock P.M., pursuant to the following agreement of counsel:

MR. RICHARDS: I don't know whether Sam wanted to treat it just by notice or whether you wanted it.

MR. McDANIEL: I have no objection to treating it as if it were taken by notice, and my only thinking is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And no way -- Do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be available in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving the witness' unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present the witness' testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness.

MR. McDANIEL: That is correct.

MR. LUNA: For the State Chairman, we do not waive our right to cross examine the witness at the trial, and in the event he should not be available at trial, we do not waive the use of this -- if he is available, but is not placed on the witness stand, we don't waive our right to cross examine him at the trial.

MR. RICHARDS: Well, let me be sure I understand. Suppose that the witness is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of trial?

MR. LUNA: I reserve the right to examine him in person.

MR. RICHARDS: Well, then, at least you are on notice from me that it is going to be my position that if you have questions to ask the witness, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are here pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as firsthand

testimony.

MR. LIMA: I understand.

MR. RICHARDS: All right. Sure.

MR. LIMA: I may ask him some questions today, but I am simply not waiving any of my rights by participating in this deposition that I don't automatically waive thereby.

MR. RICHARDS: Is there anybody else who has got a position, attorneys who are present who want to put any position of record in the case?

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BOB ARMSTRONG, a witness of lawful age, being first duly sworn, on the above causes, testified on his oath as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. IDAR:

Q Please state your name for the record.

A My name is Bob Armstrong.

Q What is your official position?

A I am Commissioner of the Land Office.

Q I am Ed Idar, Mr. Armstrong, and I am an attorney for a group of Mexican American Intervenors in what is known as the Regester case that was filed in Tyler contesting the House Redistricting Plan that was approved by the Legislative Redistricting Board of which you were a

member. We have people here, attorneys, representing parties in three other lawsuits, some of which concern the Senate and some the House, some of both. Most of my questioning will be related to the House, since that is the primary interest of the parties that I represent, which is a group of Mexican American Intervenors -- I believe I stated that. How long have you been Commissioner of Land, is that the official way to --

A Either Land Commissioner, is the short term. I was sworn in on the 1st of January of this year.

Q What did you do prior to that?

A Prior to that I was a lawyer here in Austin and I was a member of the House of Representatives.

Q How long did you serve in the House?

A For seven years.

Q What district did you represent?

A I represented Austin.

Q Travis County?

A Travis County and Burnet County.

Q Are you from Austin?

A Yes, sir.

Q All right. I would like to get right on to the meat of this thing. As a member of the Legislative Redistricting Board, I think the Board had a couple of public meetings dealing with House reapportionment and

apparently, from the testimony of one of the witnesses, a number of private meetings or the meetings that were closed to the public. Can you straighten us out as to how many meetings were held as far as you know -- how many public meetings relating to the House redistricting?

A I can remember two meetings in the old Supreme Court room. I remember one meeting which was held in this room, which was early, which was a meeting at which the Attorney General gave us a report on the status of the various lawsuits that were contesting our ability to hear these suits. You may recall that several suits were filed ahead of time.

Q Uh-huh.

A But I do not recall a private meeting at which the Board met as a group that was not attended by the public

Q Well, do you recall any private meetings that might have been attended by more than two members of the Board?

A None that I attended.

Q Did you know of any?

A I do not recall any meeting where I had any knowledge that, say, four of them sat down together without me -- or three of them.

Q How many meetings of the Board did you yourself actually

attend?

A I attended all of the meetings that were called. I believe the first meeting General Martin was out of the State and there were only four members present, then there was another meeting which the Lt. Governor was out of town. And, then as I recall I believe there were two more where we had all five people there.

Q That was about four meetings, then?

A (Witness nods head)

Q In its deliberations, did the Board keep minutes of the various meetings that were held?

A There was a Court Reporter at, I believe, each of the meetings. And, I think the -- that Bob Johnson with the Legislative Council was charged with the responsibility for taking minutes.

Q Was that done at the first meeting of the Board where he was designated, you might say, secretary or something?

A I believe that is correct, yes.

Q Were you furnished with copies of all the minutes of the different Board meetings?

A As I recall, the minutes were fairly short and we approved the minutes after the meeting or at the next meeting that was held, but I -- and I looked at them at the time we approved them. I believe I got copies

of all of them but they were very perfunctory.

Q There would be only four meetings?

A That is correct.

Q As far as you know, those are the only four official meetings at which the Board was authorized to take official action?

A That is my understanding, unless there was one other that -- But I am unsure -- not as to whether there was a meeting but whether the number was four or five.

Q Would you be willing to make available to us copies of the minutes of the Board that you have available?

A Certainly. If they are in my files I can get them.

Q You are not sure whether you have them?

A I don't remember the minutes. The minutes never, to my recollection, had any significance. I think we did pass a resolution at one of the meetings in order to get into Court -- to let the Court tell us that we had jurisdiction. But, other than that I don't think there was anything other than just perfunctory language in those minutes. It just said that we met, that we considered such a plan and that we passed it or didn't, but I never attached any significance to the minutes as a record of either testimony or that sort of thing.

MR. CUNNINGHAM: Sam, would you make the minutes available to us?

MR. McDANIEL: Sure. I think that --

MR. CUNNINGHAM: They weren't in your file.

MR. McDANIEL: No. I think they were with the copies of the proceedings. This appears to be a copy right here, Brice.

MR. CUNNINGHAM: Okay.

MR. IDAR CONTINUES:

Q Somebody has handed me a pamphlet or something that appears to be the minutes of the Legislative Redistricting Board of Texas for 1971. I wonder if you would examine it.

A Sure.

Q And tell us whether or not that would incorporate all of the official meetings that you know of.

A This appears to me to be accurate. It shows as many as eight meetings; I do not remember that we had that many.

Q Okay.

A Although I would stand to be corrected by those minutes, because they seem to be an accurate reflection. At some of the earlier meetings we just met and adjourned without taking any action. I think -- Didn't we have two public hearings -- I understand -- on the bill?

Q Right.

A One on the Senate bills -- I remember those because they seemed of more significance.

MR. IDAR: Mr. Reporter, would you mark this, please?

(Plaintiffs' Exhibit No. 1 to (the Armstrong deposition was (marked for identification.

MR. IDAR: Do you have any objection?

MR. McDANIEL: Not at all.

MR. IDAR: We would like to mark it and offer it and attach it.

MR. IDAR CONTINUES:

Q I don't want to take the time to read this at this time unless it might be necessary later on. But, do you recall -- You say most of these minutes are merely perfunctory to the best of your knowledge?

A There was not, for instance, in the minutes an incorporation of a transcript of all of the testimony we heard. They basically, I think you will notice, carried just a brief description of the motions, who was elected, the one resolution we passed -- I think then it just said things like "a plan was laid out and voted on". They didn't, you know, say in the minutes what the plan was and that kind of thing.

Q Okay. One of the things that we have been concerned with is this whole question of single member versus multi-member districting for the major counties in the State. As you would know, the Board determined to give Harris County single member districts but did not do so for the other major districts or areas, like Dallas or Bexar County or San Antonio or Nueces County or El Paso, and I think there is about 11 altogether. Do you recall whether the Board officially went into this issue? And, this obviously was going to be a policy decision that only the Board had the authority to make.

A (Witness nods head)

Q Can you give us the benefit of your experience in having sat through these different Board meetings as to what the discussions were on this point and how the issue was resolved?

A As I recall, I was the only person who discussed this matter in the Board meetings. I think it is important to look at this in -- from a point of view of time. The day that the case was made for single member districts there were only four members present, and as I recall there was a hearing prior to that which -- at which people testified both for and against the single member districts. But, there was never any discussion by the Board, other than a question and answer exercise

that I engaged in at the meeting next following the presentation for the single member district plan. At that time I asked General Martin, and there was some question about the legal ramifications of one county being multi-member and another county being single member. I then directed a question to Mr. Johnson as to whether or not in his judgement there was time for the staff to prepare a single member district plan, and I do not recall that the Board ever had any discussions in these meetings other than on my motion at that time with reference to these questions. Now, both of these questions were answered in a manner that did not give me much to go on. Frankly, I felt that the substance of the Attorney General's answer was that we could have single member and multi-member districts legally, but -- And, the answer, as I recall, from Mr. Johnson about the time was that they might be able to do it but it would be tough or something to that effect. Now, I think there is a transcript that will show the exact answers by both of them. But, I do not recall that we ever had any further discussions within a Board meeting other than to listen to the testimony and the questions and answers that were given.

Q Okay. Now, we have a transcript here of two hearings. These were two public hearings that the Board held;

these were both related to House reapportionment. The first one appears to be a transcript of the meeting held on September 30th; it was at this particular meeting where you had Dick Reed and Bill Blythe, Joe Allen, Bob Gammage, Fred Agnich, John Hill, Mike Hopkins, Earl Luna -- Mr. Luna is here with us today -- and a number of other people appearing. The other meeting was held on October 6th, and at that particular time you had basically, I think, mostly Senator Mauzy with a number of people that he brought with him --

A That is correct.

Q -- that we have been talking about.

A Yes, sir.

Q Now, was it -- you said that it was shortly after this meeting of September 30th that you raised these two questions about multi-members versus single member districts?

A It was at the next regular meeting of the Board, whatever the minutes show that date to have been, which I suppose would have been after October 6th.

Q Let me see the minutes. Will you give us some help here? I am trying to put this in context of time right now, August 24th, September 10th, -- All right. We have minutes here in this exhibit that has been introduced reflecting that you all had a meeting on

September 30th. And, assuming that this purports to include all of the minutes of the Board, the next regular Board meeting evidently was not on October 6th.

A I was under the impression that this transcript was October 6th. Am I right?

Q That is right.

A All right. Then, it would be the next one after -- the next one following that.

Q I see. Then, you raised the question after the second public meeting on House reapportionment?

A Yes.

Q Okay. The next meeting was October 15th?

A That is my recollection; that would have been when we talked about that.

Q Let me ask you this, you all knew by September 30th, obviously, since you had your first public hearing on reapportionment of the House, that you were going to be facing that issue. Was there some reason why the Board didn't bring this matter up earlier in the deliberation?

A Of course the matter had been discussed both in the press, and I am sure considered by the individual members of the Board all along, and it was my feeling both from my discussions with the Board members and from what I read that there was a split in how the

Board felt. My feeling at the time that the Mauzy presentation was completed, and I so stated at that time, was had the Lt. Governor been there at that time to have had the benefit of the testimony and had he, you know, been prepared to vote at that time that that would have been the proper time to make the motions for single member districts because you would have had time then to draft the plan and you would have had the staff available. Then we completed, I suppose, then the -- I am not sure in point of time whether we were through with the Senate bill or not, but there was some feeling that the Senate bill should be completed and then we would get on to the House bill. And, the problem that I had was that I didn't think I had the votes for single member districts at the four-man meeting, because the general concensus was there were two for it, two opposed to it and one who wasn't sure. And, the Lt. Governor would have been one of the votes for it, so if I had made the motion at the time it would have been 2-2, based on what I know, so that time passed in point of history. I wish we could have done it at that time, at least gotten it up for a vote, because then had we acted there would have been clearly time enough to do it and at least we could have instructed the staff to try to do it on that basis -- if that had been the

decision of the Board.

Q So, then, actually by inaction is what happened then; the Board merely didn't act in time and that was the time you wound up with single member districts, is that it?

A I think it was a combination of --

Q I mean multi-member districts.

A I think this was a combination of time, I think it was a combination of everybody's schedule and apparent inability to all get together and do something in concert.

Q Would you say that it was -- that the time factor was significant in giving Harris County single member districts?

A Could you make that a little clearer?

Q Well, I am wondering if because of the time factor, the time at which the thing apparently was acted on by the Board -- Let me see if I can rephrase this. Why is it that in the light of the time factor, then, that Harris County is the one that was selected for single member districts?

A Well, I am not sure that I know why Harris County was selected for single member districts. From my own point of view, one of the things that made the House bill palatable was at least you got single member

districts where, in theory, you needed them most, which would have been in your largest county -- as far as the one main argument that the bigger your county gets the more isolated a House member becomes. And, so consequently I felt that at least you put them where you needed them the most there. But, we had suggestions that there was going to be a plan which was going to be drawn by the University of Texas at Arlington which would eventually be submitted to us which would be for our consideration which would have single member districts throughout all the counties. That plan came in two parts; the last part quietly. And, as I recall, there were some obvious problems with that plan cutting lines and one thing or another that seemed to raise some legal objections to it. But, I think that there was obviously time to do Harris County, but whether there was time to do it all I could never get a clear answer on from the -- from the staff people.

Q Do you know who actually did Harris County?

A I would assume that it was done by Mr. Spellings and Mr. Hooser in the -- in conjunction with some of the Attorney General's staff -- but that is a presumption. I was not there when Harris County was done; it was brought to me in a completed form.

Q Who brought it to you? Did they bring you Harris County

alone or the entire State plan?

A As I recall -- I can't recall whether I got the whole thing at once. I think I got the whole State and then Harris County, but it could have come together. I just don't remember.

Q Do you recall the plan that was finally adopted by the Board for the House?

A Yes.

Q Was that presented to you prior to the official Board meeting at which it was adopted?

A Yes. It was presented to me some 48 hours, I would say, prior to the time we had a Board meeting.

Q And, that incorporated single member districts for Harris County but multi-member districts for the others?

A That is correct.

Q Now, who presented that particular plan to you?

A It was brought to my office, and I had a number of plans brought to my office. I am not meaning to be evasive, but I am nearly sure that it was brought to my office either by someone from the Attorney General's office or by Mr. Spellings, and I just don't know who brought it over.

Q Do you know whether the Board, during its deliberations at any time, laid any guidelines to the staff as to how to go about drafting the House plan -- any guidelines

dealing with constitutionality and so forth?

A I do not remember that we ever passed a resolution saying "do this in this manner" or that we gave instructions. I think that it was presumed that you would attempt to conform with the one-man vote rule. I think it was presumed that you would follow the decision in the -- for want of a better description -- I will say Judge Reavley's determination that you should cut as few county lines as possible. And, beyond that I do not recall that the staff was ever instructed by the Board.

Q Do you recall any instructions by the Board of the decision in the Chavez case by the United States Supreme Court that came down, I believe, in June of this year?

A None other than that I felt that it was the Attorney General's feeling that the Chavez case was the law and that we should follow the law.

Q Were you, as a Board member, apprised by the Attorney General or anybody else as to the case law relating to minorities when it comes to issues of redistricting? I specifically have in mind the constitutional guideline that redistricting plans must be drawn in such a way as to not minimize or dilute or cancel out the voting strength of minorities and significant

political elements?

A I am not sure whether I was ever advised of that or whether I read that case, but I was aware personally that that was the law.

Q Do you know whether the staff was instructed along those -- along that line there on that constitutional requirement?

A My only answer there would be that I didn't do it and I do not recall that the Board did. But I knew that certain members of the Attorney General's staff were working on this, and I presume that they were working within those boundaries -- or at least recognize that this was a problem.

Q Do you know whether the staff -- I mean whether the Board ever requested the staff to take this factor into consideration in the various plans they were going to be working -- or in drafting the House plan?

A No, I do not.

Q Was the staff ever requested to submit comparative plans or alternate plans that would show what the situation would be, say, for the Mexican American or the Blacks in the major metropolitan areas under the various plans that different people submitted to the Board or that the staff was required to prepare?

A I am not sure about the Mexican American situation,

because it was my understanding that it was somewhat difficult to obtain demographic information based on Spanish surnames.

Q On the 1970 census, you mean?

A Now, I do know that I had available some demographic data which showed a percentage of Black concentration in the major cities. It was difficult to get the information when you got much beyond Harris, Dallas, Tarrant and that kind of thing, but -- for that sized county. But, I think that the presumption of the Board was that it would be done in a manner that was constitutional. I don't think anybody felt compelled to instruct; I just think they felt like if we did it it had to be constitutional -- at least that was my feeling.

Q Did you know that you did have census data available for 1970 that would give you the breakdown by census tracts as between Black and white, that that was available to the Board?

A I believe that is true. And, I think I had that information, as I pointed out, in the major counties.

Q Now, apparently that data was not available for the 1970 -- or for the 1970 census as it relates to the Mexican American. However, do you know that the 1960 census did have demographic data that would have given

you the breakdown by census tract for the Mexican American throughout the State, and certainly for the major counties and cities?

A Based on the '60 census?

Q Yes.

A I would presume that to be true, that we could have, yes, sir.

Q So, actually you all just assumed that the staff would do its job and would follow constitutional guidelines, but you made no special effort to be sure that the staff would do that, as best you can reconstruct this thing?

A I would say that was a fair statement -- and I think a valid assumption. No one ever suggested that the staff would try not to do this or would make an effort to diminish the strength, but of course, this was one of the problems that I had with the multi-member district concept.

Q Apparently you favored a single member district?

A Yes.

Q And, what is your reasons for favoring those for the major counties?

A I felt that the arguments that were made by the proponents on balance were more compelling. I felt that if you start with the basic proposition that the

lower House should be closer to the people that this was one way to effect it. I thought that the cost factor in a major city, the cost of a race -- I believe the testimony was in a county the size of Dallas just to write to your constituents would cost something in excess of $100,000. This then bred a type of isolation on the part of the representative when he becomes part of just a major group that is out there somewhere representing you. I felt that these arguments were more compelling than the arguments on the other side about a continuity of interest or the strength of the unified delegation. This happened to be my opinion, and apparently it was not shared.

Q Was the Board concerned at all with the cost factor as far as running and being elected to office in a House race in the major counties like, say, Dallas with 1,300,000 and Bexar County with somewhere between 700,000 and 800,000; did the Board show any concern in its deliberations?

A I think that there was no Board action other than to listen to this testimony which was substantially as you pointed out.

Q Did the Board request of the staff to furnish them with any information as to the cost of campaigning for Representative's seats in the major counties?

A I don't recall that request. I think that the testimony pretty well outlined what the cost of campaigning was.

Q My only reason for asking that, some Board members have testified -- at least one Board member I know testified -- that apparently the testimony before the Board had very little -- weighed very lightly, and I wondered if the Board made any effort to try to verify this testimony through the work of the staff.

A My only answer to that would be: I am not sure that the people who testified were under oath, but most of the people who testified were knowledgeable, had run races. And, I don't know why anyone else wouldn't give them full weight for their testimony, but I would have no -- I had no hesitancy to believe them.

Q You obviously, of course, have conducted at least one statewide campaign in getting elected to -- as Land Commissioner, and I presume that in connection with that campaign you had occasion to visit all the major cities in Texas and become somewhat familiar with those cities?

A I would say that I have had some recency of experience in that regard.

Q Are you familiar with San Antonio and Bexar County?

A To some degree.

Q Have you ever heard of the West Side in San Antonio?

A Yes, sir.

Q And, that is a pretty large geographical area there in that city, is that right?

A Yes, sir.

Q And, that is where you have your rather heavy concentration of Mexican Americans.

A That is correct.

Q Likewise, in Dallas you have some geographical areas that are well known to be either Black or Mexican American?

A Yes, sir.

Q Do you feel that you know enough about both of the cities, for example, to hazard an opinion as to whether -- assuming single member districts had been allocated to those two areas -- whether or not that would have served to increase the number of Mexican Americans and Blacks that would have an opportunity to be elected to the Texas Legislature?

A I would say, based on my experience, it would increase the number of Representatives who would be Mexican American and who would be Black, and I also add Republicans.

Q Let me clear up another thing which I don't think I have cleared up. You indicated earlier that at the time you raised your concern about single member districts

before the Board that Mr. Johnson indicated that it was going to be hard at that stage in time, that particular period in time, to come up with single member districts for the other major counties.

A That was the effect of his answers.

Q That it would be hard to come up with single member districts?

A I had the impression that he was saying that it would be hard, if not impossible. But, given the time that was remaining --

Q Well, did he absolutely rule it out as a possibility?

A I do not recall. I think that -- I think that the term that I remember that he used was that it would be "tough".

Q But not impossible?

A I think the transcript of that meeting will show exactly what he said, but that was my impression.

Q Mr. Johnson has testified that he has a staff of somewhere between 50 and 60 people in the Texas Legislative Council. Do you think it would have been impossible to come up with a plan, single member district plan, for every major county with that type of a staff available?

A Let me answer that in light of my experience with this Board, and start by saying that I did not conceive of

myself nor was I by any means an expert. I think that this kind of thing requires a certain amount of expertise. It is quite obvious when you are dealing with this kind of thing that people who have done it before, either at the staff level or, say, the people who have been chairmen of the various Senate House Redistricting Committees, are very able to perform things that a newcomer does over a long period of time. I have said before that it is like putting together a puzzle; it is very complicated the first time and it takes many hours, the second time it is easier and the third time it is easier yet. I do not know how many of Mr. Johnson's staff members are able in that -- and experienced in that kind of task. But, I had to rely to some degree on his judgement. For instance, I tried at one time with my staff, which was very limited, to work on this -- without success. It concerned me at the enormity of the task.

Q Your staff didn't have the expertise?

A That became apparent as soon as we got into it.

Q However, the Legislative Redistricting Board had been working on this considerably, both before the House and Senate, during the regular session and they also worked on this in '65, I believe, when they reapportioned Texas -- both the House and Senate -- so they had a

certain amount of expertise.
A That is right.
Q Okay. I gather that -- Really, would it be fair to say that what Mr. Johnson said was a large factor in your own decision that maybe it was too late to insist on single member and you went along with the plan simply because you felt that was the best that could be obtained under the time that existed?
A That was a part of it -- and a major part of it. I said at the time that I would have preferred the single member district and that if we did no more than to formulate a plan with Harris County and the majority of the State in single member districts that perhaps at some subsequent time, using that as a basic plan, if the law were such, that we had to have single member districts, that some Court at some subsequent time might be able to then fill out the remainder of these cities -- if that was what they felt the law should be.
Q Okay. I just have one or two more questions and I am going to turn it over to somebody else. You do recognize the fact that both your Mexican American and your Black face up to some rather serious problems in Texas socially, economically, educationally and have other problems as groups?
A I do.

Q And do you further recognize the fact that -- or is it your feeling that they have up until now had their fair share of representation in the Texas Legislature?

A I would say that, for whatever reason, that certainly there is not a proportional numerical number of Mexican Americans or Black Representatives in the Legislature. Now, whether that is because of redistricting or some other reason I don't think anyone can say with certainty, but this was one of the reasons why I felt that single member districts would be preferable.

Q Assuming that both of these minority groups, and it has been testified to generally here, and you might agree with me that the Mexican Americans constitute roughly 20 percent of the population and the Blacks somewhere between 10 and 15 percent. Now, we are talking roughly about 32 to 35 percent population of the State, or one-third. Assuming that both of those groups do have their proportional representation in the House and in the Senate of Texas, and based on your experience as a State politician now -- young one, maybe, but still now at that level -- do you feel that adequate representation for these two groups in the Legislature would help bring to a focus, hopefully, some of the solutions to some of the problems that are besetting both of these population groups?

A That is a long question, but I would say: yes, I am in general agreement with it.

MR. IDAR: Thank you.

CROSS EXAMINATION

QUESTIONS BY MR. BERG:

Q Commissioner Armstrong, I am David Berg and I represent Curtis Graves of Harris County. Commissioner Armstrong, I am concerned about when you first became familiar with the map that I am now showing you of the new Senatorial Districts of Harris County. At what point was this map presented to you for the first time, sir?

A In point of time, the only thing I can remember is that it reached me after all of the other Senate map was completed, and I would say somewhere between 24 and 48 hours ahead of the time that we were to vote on the Senate bill.

Q Now, was this presented to you as fait accompli as the map that was going to be approved by the Commission?

A That it was already decided, you mean?

Q Yes.

A No. It was submitted to me as the final draft. The only thing I can't remember is with reference to Senator Schwartz' district. I cannot recall whether Senator Schwartz had that corner carved out as part -- on the map that I am looking at -- it has the number 17 on it.

But, other than that it was presented to me as the map that we were to consider.

Q Commissioner, I am concerned about the basis upon which it was decided to draw the map this way for the Senatorial District. You were at all the meetings, I believe you have testified.

A That is correct.

Q I take it there was some internal discussion with other individual members of the Board or the Commission?

A There were phone calls from time to time, from my point of view, mostly volunteering to be present whenever we were going to work. I called the chairman from time to time to outline my schedule and to say that I was available. And, we did not discuss in any of those meetings, as I recall, a lot of anything about how lines would be drawn or that kind of thing; maybe a conversation that "well, we have got it all done except Harris and we will send it over for you to look at when we get it done" and that kind of conversation. But, we did not meet in twos or threes except -- to draw lines -- except after this map was presented.

Q Was there any discussion of the basis for drawing lines or how Houston was to be divided in the Commission -- within the Commission -- either official or any

unofficial capacity -- or the Board, rather. Excuse me.

A There was not any discussion that I recall between any of the Board members and myself until after I received this map. After I received it I was concerned with it and I discussed it with some of the Board members.

Q Would you tell me which Board members you discussed it with?

A As I recall, I discussed it with the Lt. Governor and with the Attorney General.

Q What was the basis of your concern, Commissioner?

A Well, the original concern that I had with it concerned these three precincts which I will try to decipher.

Q Well, you are saying -- Those are census tracts?

A I beg your pardon?

Q Let's see.

A And this is a small map.

Q I think that -- We will see if we can't make some sense with this larger map. Is that --

A That is 208, 207 and 206.

Q What was your primary concern about these areas?

A Well, they had primarily -- or I am sorry -- formerly been in Senator Jordan's district and they were what I considered to be part of the Black Core.

Q You are speaking -- Excuse me. I am sorry.

A And I felt that where you were changing an existing

district -- as I understood the law to be -- in a manner such that you would run the risk of criticism, that you were diluting the district of that core area, that you had to be careful and that the effect of your line drawing was not to dilute this voting strength. And, my suggestion was that it might be more proper to leave this, or these three census tracts, with the rest of the core area rather than to leave it like it was running over into River Oaks.

Q Now, when you mention "River Oaks" -- For the record, you are familiar with Harris County to a certain extent, are you not?

A Yes.

Q River Oaks is an oppulent, affluent -- one of the most affluent in America; would you agree with that?

A I would agree with that.

Q Let's start with the basis, Commissioner, of whether or not you consider that the precincts or the census tracts that you have enumerated and that you were concerned about really have any community of interest with River Oaks.

A I have been in Houston and I have been in that area, both areas, and I would say that certainly no economic community of interest, no racial community of interest. Although, in fairness let me point out there are, as I

recall, some members of the Black community who also live in another part of this 15th District out on the -- I will have to ask your help -- is this Katy Road and this is Hempstead Road?

Q Yes.

A All right. Then, out the Hempstead Highway, as I understand it, there are some members of the Black community.

Q Would it surprise you, Commissioner, to learn that according to a 1970 map, property map, based on the 1960 census tracts, that you are talking about an area of the city, the three areas you were talking about, first, that concerned you, Black areas formerly in Senator Jordan's district, are part of the poverty pocket of Harris County, Texas?

A It does not surprise me.

Q You have seen it?

A Yes.

Q You have seen it and you know it is a ghetto area. So, economically there could be no dovetailing with the River Oaks type area that also exists in the new District 15?

A That was my feeling at the time and is my feeling at the present time.

Q Okay. When this was pointed out to the Lt. Governor --

we will take him first -- what was his response?
A Well, let me say first of all that I suggested a change, and the change that I suggested was admittedly not perfect but I thought it was better, without going into detail, because I don't have the numbers. I suggested that a three way change could be accomplished which would in effect leave the Core connected, would add an area to the southernmost part of District 15 out of District 7 and then would add to District 7 a part of District 11, which would make up for the portion that -- I am sorry -- which would even out so that you would have a three way shift and leave the core intact and add here and add in District 11 somewhat in this manner.
Q Before we go on to the response of Lt. Governor Barnes, could you give us the basis of your decision or your, I guess, rather hastily -- Well, strike that. Could you give us the basis of your concern and what you wanted to see accomplished by the suggested lines that you gave to Lt. Governor Barnes and to whomever else you may have given it to?
A I just thought it would leave the Core intact to a greater degree and avoid the risk that we might run of somebody saying "you were diluting not only the strength of the Black community but also the Republicans strength if those people were effected over in this area

Q And, in essence diluting any minority strength, whether it be a Republican or a Black.
A That is correct.
Q What was the response of Lt. Governor Barnes?
A Well, his feeling was that in terms of percentages the Blacks in the 11th District --
Q You are speaking of the new 11th District?
A That is correct. -- had a higher percentage of the total population than Senator Jordan had had in her district, and so consequently it would not make any real difference as far as Black proportionate representation was concerned; there would be just as much chance of a Black being elected based on the facts that Senator Jordan had prevailed.
Q Senator Jordan, who had run unopposed in the last race -- in the last three races.
A I am not aware of that history.
Q Did you also take this to the AG, your objection, to the AG?
A I took my proposed change, yes.
Q And what was his response?
A His response was substantially the same as the Lt. Governor's, plus the fact that he felt that you would be doing violence to the 11th District and make it look less compact. And, I will admit that fault in

my amendment, because there was no way we could make the numbers work and make it totally compact. It would have run a gooseneck out into this southernmost area of the 11th District. He also felt that it would be isolating certain Blacks out the Hempstead Highway. And that, as I recall, was the substance of his

a argument coupled with the argument that there was the same percentage factor -- or rather the percentage factor argument -- that the Lt. Governor had made.

Q So, part of his concern was that the district remain contiguous and compact?

A And that my proposed amendment destroyed that compactness.

Q Did he at that time make any explanation for the contiguous and compact District No. 13 that goes all the way around the city and looks like a horseshoe?

A No.

Q But it was a concern of his that your proposed change might create a non-contiguous compact Senatorial District

A Yes. And, let me say in fairness, there is in my judgement, at least, a tangible position in certain cities that a circular district embodying all of the communities, for instance, let's say, in Dallas County where you have communities like Garland and DeSoto, that perhaps there is more of a community of interest

around these, what I will call, fringe cities than perhaps there would be in running a pie-shape into the center of the city.

Q All right.

A What I am talking about is I don't think a horseshoe or circular district is bad per se; you just have to look at it --

Q Let's talk about our horseshoe for a minute.

A All right.

Q Are you aware there are -- Well, did any of the testimony indicate to you a divergence of interest from the residents of this pie-shaped district -- a very strong divergence of interest politically?

A I would say that -- Oh, I don't know what you mean by the word "testimony" other than that I can take -- Well, I have personal knowledge there is a divergence, and I think this is an accurate statement.

Q So, in 13, which, -- the 13 which encircles the city almost -- would you object to that, then, if I understan correctly, because of the lack of political identity within this particular group -- the lack of political community of interest?

A I would object to it. But I would not object to it, for instance, as strongly as I would to the severance of the core; I think it is a clearer case there.

Q In other words, both Lt. Governor Barnes and the Attorney General would not sacrifice -- Strike that question. In making your -- in taking your new proposals, Commissioner, to Lt. Governor Barnes and the Attorney General, what other factors did you consider? I know your prime concern was the core city being diluted; what other consideration, if any, did you have about that particular area -- or about any area?

A I did not -- I was more worried about that than I was about anything else; that was my paramount concern.

Q Did you indicate to the Lt. Governor, then, that Blacks were not going to be represented under this plan?

A I just felt that there was less chance for the core to be represented. I do not recall indicating that to him. I simply pointed out to him, and to Mr. Spellings, that the effect of this plan -- and that in my judgement the plan could be improved if we did it the way I suggested. But, I think it was clear that this was a problem -- the problem of lack of representation there was.

Q Let's get into -- Let's take it one step beyond this step, Commissioner. If the lines are left the way they are, are you familiar enough with Harris County and

Harris County politics to speculate whether or not a Black could be elected from any of those districts, as an example?

A This would be the grossest kind of speculation, because they are all two man races and it would depend on who that Black was and who her or his opponent might be. So, I would not say and couldn't say. No one can firmly say that someone can't be elected, but I think it is more -- in my judgement it was proper to leave the core in, or as much of the core as possible, in a district as you could. And, I felt that this was a fairly clear severance of the core, which was one of the reasons that I didn't sign the plan.

Q Why was that done?

A I beg your pardon?

Q Where was the core severed?

A I have no idea.

Q In talking with Lt. Governor Barnes, the Attorney General, no one indicated to you why the plan was drawn that way?

A No one suggested to me "we want to do it this way because of this".

Q Who drew that map?

A It is my understanding that it was prepared by the Senate staff and perhaps in conjunction with the

Attorney General's office, but I don't know that. You will have to ask someone who does.

Q Do you know of your own personal knowledge whether or not a Mr. Hooser had anything to do with that?

A I do not know anything, except Mr. Hooser was on the Senate staff together with Mr. Spellings.

Q Was it your impression that they had the -- I know you have testified before that at least in the House maps you thought that they were done by Spellings and Hooser, but you just -- You had no personal knowledge. Is the same true with the Senatorial Districts; is that your impression?

A Yes. The only thing I can tell you, we did not draw lines in our office. Plans were submitted to us. It is difficult for me to know, for instance, if someone on the Attorney General's staff drew each line or part of the lines or had suggestions, because I just don't know. But, I know that the people who had the most expertise and experience at the Senate staff level were Mr. Hooser, who as I recall had been Committee Clerk for the Senate Redistricting Committee, and a Mr. Spellings. Then, I know that Mr. McDaniel worked on -- from the Senate's point of view -- I am sorry -- from the Attorney General's point of view, and he may be able to tell you the others who worked, but these

were the people who were all involved.

Q Do you remember if Hooser was at the meetings that you attended, Mr. Armstrong?

A I do not remember his presence.

Q If you will, excuse me just one minute. I am going to get this question straight.

MR. NELKIN: May I ask a question?

MR. McDANIEL: Sure.

CROSS EXAMINATION

QUESTIONS BY MR. NELKIN:

Q Commissioner Armstrong, we had talked about the desirability in some cases of having the horseshoe district, and that would be because of the community of interest. Now, it is my understanding of your knowledge of Harris County that there is not a community of interest in our horseshoe, which is now District 15.

A I think that it is safe to say that the east edge of the county is predominantly oriented toward industry while the west end of the county is predominantly oriented toward either residential or farming.

Q Okay. And, so that the fact that compactness was sacrificed here wouldn't be in order to continue a community of interest?

A Well, that is a fair statement except when you consider the alternative. Let's say that you run pie-shapes

from the outside edge of the county into the center. I am not sure that you are doing any better in terms of compactness, for instance, to run part of the core all the way out into the county. I mean, it is just a hard judgement call to make. This may be the best you can do with that outlying district. That was not my major objection to the bill -- or to the plan.

RECROSS EXAMINATION

QUESTIONS BY MR. BERG:

Q Did you ever speak to Robert Calvert concerning this particular map?

A No.

Q Did you ever speak to Gus Mutscher about the map?

A No.

Q Did Gus Mutscher play much of a part in the redistrictin[illegible]?

A He was present in the voting and he had some alternative House plans to suggest.

Q Were you aware of Representative Graves'proposed plans for Harris County in the Senate?

A I had a plan submitted to me at one time that, I believe was his.

Q Did you have any particular objections to Curtis Graves' plan or do you remember it?

A I have looked at so many Harris County plans it is difficult for me to remember exactly what his looked like.

Several Harris County proposed plans were submitted, and quite frankly I do not remember the effect. I do remember that I looked at his plan in terms of what I thought it did demographically. And, it, as I recall, made almost a total core district which I would not have objected to. I think --

Q Excuse me?

A Excuse me. I was going to add that I think that Representative Braume also submitted a plan which was substantially the same in its concept, which was that you started with the basic core district and worked out from there.

Q Commissioner, you didn't sign the bill, did you?

A No, sir. The Senate Plan I did not sign.

Q The objections that you have told us about today, were those the basis of your refusal to sign?

A My basic objection was to Harris County. I had some concern about other portions of the State, but I would say this was my basic objection.

Q Were you aware of who drew the map for the new Congressional seat, United States Congressional seat?

A No.

Q Are you familiar at all with the relationship of the drawing of that map and the way the Senatorial lines were drawn?

A No, sir. This is the first I have heard about any possible connection.

Q There is no connection about the way the new Congressional seat was drawn and the way the Black vote has been diluted in Harris County?

A This is the first time I have heard any suggestion of that. I did not follow the Legislature's Redistricting. As far as I know I have never seen a Congressional map of Harris County.

Q Was there ever any mention of the corporate income tax during the period of time -- By the Commissioners or people interested in the redistricting, was there a mentioning of corporate income tax concerning the way the Senate would be drawn?

A Not in my presence.

Q Would you speculate that part of the motivation for drawing the map this way was to insure that the corporate income tax would be defeating?

A That would be gross speculation, and I would not care to.

Q Commissioner, we are concerned also that the wishes of the parties whose advice was sought by other members of the Board had a great deal to do with the way this may was drawn, other than members of the Board. Do you recall Commissioner Calvert talking about the way big

business wished the Senatorial Districts drawn?

A The only recollection I have was at some Board meeting in, as I recall, the questions and answers that followed Representative Graves' testimony there was some mention made about business interest by Mr. Calvert, but I do not recall that line of testimony. I think it was just a comment that he made, that I think that maybe the transcript of that meeting might show.

Q Do you feel that this particular map would reflect big business' interest better than, say, the poor people of Houston or the Blacks of Houston, which is pretty much synonymous?

A Again, that is a matter of who is running. And, I just -- I can't say much more about it other than it is obvious in these three census tracts that you have severed an area which, to me, does not have a community of interest with the area that joins it in the district. Now, obviously to me the effect of that is that the people in that -- in these three census tracts would have a hard time getting elected. Although, if you followed this to its logical conclusion I represent these people and these people, although my -- because my district is statewide.

Q Yes, that is the difference.

A Yes.

Q Commissioner, you five men were charged with making sure that representation -- or at least hopefully -- that representation in this State was fair, were you not?

A That is correct.

Q In your dealings with the -- I suppose part of this responsibility implies a certain sensitivity to the minority groups of this state -- a sensitivity to all groups of this state in drawing the maps? I suppose that would be part of what was felt by your Board -- to be part of its duty -- to make sure those people were represented fairly too, the minority groups.

A And not to guarantee representation as much as to avoid dilution willfully or knowingly. I think the Court spoke of this, and I am not sure if it is Chavez, but it just said that, I believe, the term was "religious, ethnic and political groups shouldn't have their strength diluted willfully by the drawing of the lines in a manner that would dilute the districts".

Q But, based on your knowledge and despite this particular moral impairment, there was a known dilution? I mean, everybody knew on that Board that there was a dilution of the Black vote in Harris County, did they not, by this new map?

A I think you would have to ask each one of us that. That

was the way I felt and that is why I didn't sign the bill.

Q But, at the very minimum you pointed this out to at least Ben Barnes and Crawford Martin that that was your opinion?

A And, I suggested a solution, and their feeling was that my solution was not substantially better than the bill.

Q They had access to the same racial makeup of the -- the same facts concerning the racial makeup of the State that you did, is that correct?

A I presume so. Understand, I used my own data which I prepared.

Q Well, I see what you are saying. But, Ben Barnes is surely familiar with the makeup of Harris County, the ethnic makeup of Harris County, is he not?

A Again, I think this would be a proper question for you to ask Mr. Barnes.

Q I am not asking you to go in his head. I am sorry. One last thing that concerns me. If we follow the moral and heralded train of thought, did you personally detect in the way minority group members were referred to, for instance, as among the members of the Board? Did you detect anything that you would consider insensitivity of the needs or to those racial groups?

A Well, you are again asking me to go into somebody's

head. I think by and large there was an awareness of the need to have some sensitivity or else you were going to have constitutional problems.

Q And lawsuits?

A Yes.

MR. BERG: I think that is all we have.

MR. CUNNINGHAM: I just have a couple of questions.

CROSS EXAMINATION

QUESTIONS BY MR. CUNNINGHAM:

Q Mr. Commissioner, my name is Brice Cunningham and I represent George L. Allen, Van Holmes and Mr. Conrad, and we are primarily concerned about the House Redistricting Bill which I believe, first of all, you did sign that bill?

A That is correct.

Q I mean sign that plan.

A That is correct.

Q Okay. And, I believe you are familiar with Dallas County and the Black community?

A Perhaps to a lesser degree in Harris County, but that is my fault because the state is too big. But, I am familiar basically with it, yes.

Q Okay. And, I believe you have served in the House with both Representative Lockridge, who is now deceased, and

Representative Zan Holmes.

A That is true, I have.

Q And, I believe that presented before the Redistricting Board was testimony concerning the cost of running a countywide race as against a single member race, is that true?

A That is true.

Q Okay. In your opinion, based upon that testimony, do you think that if a Black was not on the team that he could be elected in a countywide race?

A Well, I don't mean to repeat myself over and over, but I think it would depend upon who that man was and the temper of the times. And, I would cite as an example the fact that for the first time a Black was elected to the City Council here in Austin in a citywide election. But, I think that the number of Blacks who have been elected throughout the State by comparison to the number of Black voters in the State indicates at some point there is a breakdown in the ability of the Blacks to elect a proportionate number of people. Now, whether this is because of the redistricting plan or whatever, maybe money, maybe a lack of organization, I don't know. But, I think everyone has to agree that we have not elected a proportionate number.

Q And, probably my final question. If a single member

district plan had been adopted for Dallas County, Texas, based upon the information you have, do you feel that there would have been more than one Black elected to the House?

A Yes.

Q Do you have any idea how many?

A I am not sure on the figures exactly, but I would guess either three or four in terms of numbers.

MR. CUNNINGHAM: Okay.

(Whereupon, a recess was had (at this time.

CROSS EXAMINATION

QUESTIONS BY MR. EASON:

Q Mr. Commissioner, I am Nathan Eason from San Antonio, and I represent Van Henry Archer, Jr. and others, and our suit encompasses both the House and Senate Redistricting. Now, were you ever shown, or was it ever submitted to you, a single member district plan for Bexar County that you recall?

A My memory is not infallible, but I don't remember any single member district plan for Bexar County, except one that a staff member of mine prepared. Although, as I recall, there may have been one submitted to the Board rather than just to me.

Q Yes, sir. I am going to hand you a copy of a letter

addressed to Attorney General Crawford Martin dated October 8, 1971, signed by Van Henry Archer, Jr., and ask you if you have ever seen that letter.

A I could not recall seeing that letter. I must remind you that I perhaps received -- have received 4,000 or 5,000 letters since I have been in office. I am not saying as a certainty that I haven't; I could have but I don't recall it.

Q I certainly understand that you had numerous correspondence on this matter, but it does recite in the letter that enclosed is a map of Bexar County divided into single member districts.

A Yes.

Q And, of course, it is addressed to Attorney General Crawford Martin and was not addressed to you. You have stated today on the record that you are in favor of the single member districts for the metropolitan areas, is this correct?

A That is correct.

Q And, you feel that it would give a better religious, ethnic, racial and political representation to the individual voters of the various districts, is this correct?

A I believe that would be true.

Q Now, is this the reason that you either refused or

neglected or did not sign the Legislative Redistricting Bill?

A I did not sign the Senate bill. I signed the House bill.

Q Oh, that is correct. Would you tell me why you didn't sign the Senate bill?

A I think most of my reasons were reflected in my earlier testimony in response to the lawyers for Representative Graves' questioning, but I was concerned that we could have done a better job from my point of view; that was just one Board member's point of view. Let me point out, as I also did at the time that many things passed in the House while I was there by less than 5-0, because there are differences of opinion.

Q I believe you stated earlier that the University of Texas at Arlington prepared certain plans. I don't believe that was pursued, or if it was I lost the train of thought. Where are those plans, if you recall?

A They came -- or one came in two parts. As I recall, most of the State was done in the first plan and then the cities were done in a plan which reached my office, perhaps, as late as 12 hours before the final meeting. I submitted both of the plans to the Chairman, and at that time it was pointed out that there were certain -- I don't know if flagrant is the proper term -- but

basic faults in the plan in terms of breaking county lines and that kind of thing.

Q Did this have to do with both Legislative and Senate redistricting?

A I believe it was just the House.

Q Who arranged for these plans, if you know?

A As I recall, the first I heard about them was from Senator Mauzy who said that some professors were drawing these plans and would try to get them ready. But, apparently they found out the same thing we found -- that it wasn't as quick and easy a job as it might seem at first blush.

Q Did they provide for a single member district in the metropolitan areas?

A They attempted to, yes.

Q And, do you know where these plans are now?

A As far as I know -- I may have copies or they are here in this office.

Q If you do have copies you would be willing for us to look at them and examine them and make copies of them?

A When these series -- When this series of depositions was started I announced that any records that we had or any maps we had worked from or with would be available to all the parties.

Q Commissioner, I am going to hand you a map, which is a

Texas Senate District -- says "Enacted by the October 15, 1971" -- Now, this is the bill that you did not sign, is this correct, setting up these districts?

A It appears to be, yes.

Q Now, I will call your special attention to District 21, which is in South Texas beginning down around Starr County and including Starr, Jim Hogg, Duval, Zapata and going on around and taking in the northern part of Bexar County, and coming clear into the northeast part of San Antonio proper; do you locate that?

A Yes, sir.

Q Completely encircles Districts 26 and 19, which are the Senatorial Districts of Senator Bernal and Senator Kothman.

A Yes, sir.

Q Do you have an opinion -- do you now or did you then have an opinion concerning the constitutional requirement of compactness and continuity in regards to District 21?

A My answer is somewhat the same as it was to the suggestion that there were problems with the horseshoe district in Harris County. The horseshoe, or circular district, in my judgement, are not bad per se.

Q Yes, sir.

A I did have some reservations in my own mind about the

inclusion of Alamo Heights, which I believe is in this district.

Q Alamo Heights, Olmos Park and Terrell Hills, et cetera.

A Yes, sir.

Q Are you familiar with the political voting records of these areas?

A Yes, sir.

Q They are strongly Republican, isn't that true?

A I characterize them at least conservative, and I am not familiar specifically on the basis of Republican-Democrat.

Q Based upon this do you feel that this is a proper district, concerning religion, ethnic, racial and political dilution of votes?

A Well, I don't object per se to the core as encompassed by 26 because I think it has a community of interest, but I did have some reservations about the compactness theory in the Bexar County situation.

Q Well, for the purposes of this interrogation, Commissioner, let's presume that 19 and 26 are all right -- not that they are -- but I mean I am talking specifically now about a dilution of this area of northeastern San Antonio, very conservative votes, by being incorporated with Duval County, Zapata, Jim Hogg, Starr and so forth.

A I see what you are saying, but I am not sure that it is diluted anymore than, for instance, if it were thrown in in a very numerically disadvantageous way with the West Side.

Q Let me ask you this. I suppose you are familiar with the contiguous counties going north from there, north and west from there, say, Comal, Kendall, Kerr, Gillespie; are these basically conservative counties?

A Was your question "are they"?

Q Are they, yes, sir.

A Yes, I think they are.

Q If you will turn that over you will see just how far actually this -- this is a blown up map of Bexar County. And, this is 21, which goes clear down almost into town to take in that northeast district. Let me ask you this, based upon the idea of community of interest, now would you have an opinion concerning a community of interest between this area here and the voters and the residents of Zapata and Starr and Jim Hogg and Duval Counties?

A I would say that a case could be made that there could be more community of interest between the residents of Kendall and Guadalupe than there is for community of interest with South Texas.

Q Well, let me ask you this, Commissioner. What community

of interest could there be between the people of Alamo Heights and the people of Duval and Starr Counties -- either economic or means of livelihood or ranching as opposed to just any type of -- I am at a loss to understand how there could be.

A Well, of course, there is no total community of interest in any Senatorial District in the sense that you have, for instance, in this Senatorial District both very poor and very affluent sections. But, I think that if I were to draw my own map Senatorially that I would have preferred to put them somewhere else if I could have done it and conformed to the one-man - one-vote test. But, of course, there again when you have county line problems, this is the thing that makes the districts look funny. As long as you have to do the -- as long as you have to conform to the mandate that you have one-man - one-vote and that you break these county lines as little as possible, you get into the strange looking districts. But, I would agree with you that perhaps there would be a more valid community of interest with the counties to the north than perhaps the counties to the south.

Q Well, let me ask you this: looking at this Senatorial map can you see any other district in the State -- and I certainly understand the problems of staying within

community of interest and continuity and compactness and I am not oblivious to this at all -- but could you see any that has a situation where it goes for such a large area and has such a great diversity, in my opinion at least, of community of interest and political interest and so forth as you do in District 21 in any of these Senatorial Districts?

A I would say that is probably the, based on what I know of those communities, the least community of interest of the districts as they are shown on the map.

Q Do you recall whether or not you had any correspondence or contact with either Senator Bernal or Senator Kothmann or their constituents in regard to this?

A I recall that I did.

Q Would you be kind enough to state with whom and when and the circumstances, as near as you can?

A I recall that Senator Bernal discussed with me only the desire on his part -- and I would say I think in some fairness not in a selfish sense as he explained it to me -- that the Mexican American community on the West Side be left intact and not severed or split in half. He was also interested in an area which, as I recall, was down by the Kelly Field area and in the new University area which, I believe, was northwest.

Q Yes, sir.

A But beyond that he did not discuss with me any other -- The case he made to me was pretty much "if possible, to give the Chicano community a chance at a Senate member".

Q Well, that is certainly understandable. I mean, each man, of course, wants to protect himself and his constituents. Do you have an opinion at this time, based upon the fairness, the continuity and compactness, the community of interest, the political diversity and so forth, as to the propriety of making District 21 the way it is?

A Well, of course, are you familiar with the ripple theory of redistricting, that everytime you make a change it has to ripple out if you are going to come up with the proper number of people in the district? I am not sure, for instance, what the alternative might be, but let's say we follow your line of thinking and we will go with putting Terrell Hills, let's say, with Comal County. Then you are faced, for instance, with putting part of the West Side, as an example, with Zapata; and I am not sure that I can say in my opinion that that is any better. These are the problems you are confronted with all the time. Everytime you make a change that seems to solve a problem it seems to create another one.

Q Yes, sir. But, it wouldn't necessarily entail the West Side; I mean 19 and 26 could be left as they are. And, I am certainly understanding what you are saying, but there would have to be a population take-over by 21 to compensate for that which would be taken out, is that correct? In other words, it would have to either come this way or go this way or this way or into 19 or 26 to make 21 commensurate with the overall population then? And, by the same token, when you went this way -- I am sure that can't all come out in the record. If you went this way -- if you went north or northwest with the Terrell Hills, Alamo Heights, then of course that would have to be compensated for in the other districts, wouldn't it?

A Everytime you make a change it effects the surrounding area.

Q My point is this: do you feel -- and I know this isn't the test -- but do you feel that this is a fair and equal distribution or Senatorial District line in order to comply with the requirements as set down in the Chavez case and the other cases -- do you think it meets the test?

A You are almost asking me to be a Court. I would say that this particular district gave me the most concern, other than the Harris County situation because of the

way that it hooked in there, as not being a community of interest district.

Q All right, Just one or two more questions. Do you feel that as it now is drawn that there is any dilution of the votes of the people of northeast San Antonio and northern Bexar County by drawing the lines as they have been drawn in District 21?

A Well, again, I would have to say: as compared to what? I think they could be just as diluted by being run into the West Side. And, quite frankly I think they are less diluted in the manner that it is drawn than they would be, for instance, if they had been run into the West Side. Although, I would have felt that that would be objectionable, because I think it would dilute not only the West Side but the north cities. Do you follow me?

Q Yes.

A But, I -- That district, as I say, gives me some concern and did.

Q And, it surely is more diluted -- and I am not putting words in your mouth, you answer it the way you want to-- than it would be had the district gone from northeast San Antonio, north Bexar County, north and northwest where you have admittedly conservative --

A I would say that perhaps you would have more of a

community of interest running those cities to --

Q And more of a political affiliation and similarity of political beliefs?

A I might have someone from Kendall County to come and say "Why did you dilute us with those city people". But, this is a problem because you have to put everybody in a district. But, it would seem to me that there would be a better way to form a community of interest.

Q And, is it fair to say, also, a political interest? Now, we have admittedly said that this is a very conservative -- let's leave the Republican-Democrat out of it -- a very conservative area here. And, I think you will agree, and I believe you stated, that Gillespie, Kendall, Kerr and these counties to the north and northwest are also very conservative in their voting.

A I will say "yes" to the description of the counties. They are conservative and you would have -- But, I would also point out that I don't feel we are obligated to draw conservative districts as such anymore than I think we are obligated to draw liberal districts. I think the Court test is whether you clearly draw these districts in an effort to dilute then you run into trouble. But, you are going to have some dilution anytime you draw any district unless you could come up

with one that was totally perfect.

Q I realize perfection is an absolute, but I am simply -- I am hitting the political as well as the community of interest both in this District 21, and I am simply trying to determine whether or not -- You have admitted that it is not the best of all possible plans, of course. And, whether or not it couldn't have been considerably better, both from the politcal viewpoint and from the community of interest viewpoint in going in another direction and going down to the Rio Grande Valley.

A I would say that would seem to me to be more proper.

MR. EASON: I believe that is all. Thank you.

MR. McDANIEL: I have some questions of him if nobody else does.

CROSS EXAMINATION

QUESTIONS BY MR. McDANIEL:

Q I would like to ask -- Leave those maps out if you would, please, Mr. Eason. I would like to ask one or two questions, Mr. Commissioner, about the Harris County situation generally, and then I want to talk some about this District 21 thing because it offers a good comparable of some of the problems that you face in drawing districts. First of all, concerning the

Harris County districts, are you aware of the approximate Black percentage in the district of Senator Jordan?

A As I recall, it is approximately 38 percent.

Q It is somewhere, in rough figures, around a third, as I recall. I will take 38, though, if that is what you recall. I remember it was well less than half. In your discussions with the Attorney General, at least -- I don't know about the Lt. Governor -- was there not some discussion, and in fact, cannot a pretty tenable argument be made that the Black community is as well or better served by several districts in which the Black population is large enough to command an attention as opposed to, say, one district in which they have a cinch of electing a member of their own race to the Legislature?

A It is my recollection that that argument was made, and I did not list it as one of the arguments. I remember that that argument was made.

Q Yes, sir. This is a choice, I mean, about which reasonable men could differ, is it not?

A Yes.

Q The other thing, and this is not so much directed toward your testimony that you have given so far on this as it is to the fact that you have been a member of the

Legislature from Travis and Burnett Counties and have been a member of the Legislature from a multi-member district, and that is true, is it not?

A That is correct.

Q I recognize the remoteness argument that you get more remote as the multi-member district gets larger and has more members, and I don't quarrel with your view on that. My question to you is: at the time you were a member of the Legislature from the multi-member district which included Travis and Burnett Counties, did you ever feel that you could ignore the Blacks in your constituency?

A That is a hard question.

Q Well, did you ever ignore them, I will put it this way?

A No.

Q Did you ever feel that you ignored the Mexican Americans in your community -- I mean in your constituency, excuse me?

A No.

Q Did you attempt to represent their interests?

A Of course, any Representative would do this. I think that there were times when I feel like I was perhaps closer to these two communities than the other members of the delegation, and I am not sure that I had the ability to be intimately familiar with their problems.

Q Well, the point I am driving at is the fact that you were elected from a multi-member district doesn't mean that the particular Representative who is elected is going to choose one particular segment, say, if it is 51 percent or 60 percent or something like that, and represent it to the exclusion of everyone else in the constituency.

A I think that is a fair assumption.

Q Let me turn now to this District 21 situation here, and let me make the same assumption that Mr. Eason made a moment ago -- let's see, that is the Houston map and we don't need it -- and that is that a decision has been made concerning Districts 19 and 26 and that they are to be drawn this way and then we are faced with the problems of what to do with the 108,000 people that are left over in Bexar County. Mr. Eason has suggested that perhaps instead of putting LaSalle and Webb and down to Starr County to the south, that you put instead Kendall and Comal and Bandera and Gillespie and Kerr and these counties to the north -- I don't know what limits he would go to and I don't know what limits you would have to go to to make up the population there, but the point I am driving at is what would you then do to get the people that you needed to complete District 21?

A Well, of course, this is the ripple theory that I talked about. You have to put everybody in a district, and no one who has not gone through the agony of trying to make the puzzle fit will ever understand it totally; but this is the difficulty you have. I think the answer is -- one of the answers is -- which 108,000 do you sever out, first of all.

Q All right.

A And, it is my understanding that his objection is you pick a certain kind to sever out. But, I concur with your agreement that once you do that you then cause other problems elsewhere.

Q Now, you also stated that this was one of the largest districts in the State and contained possibly a greater degree of dissimilarity of interest than most of the other districts in the State, and I agree with that. But, I would point out -- And, I am doing this for the sake of the record, it may prevent you from having to be called as a live witness next week -- it may not too -- so I won't raise your hopes in that regard. But, District 25, which is immediately north of District 21, goes all the way from Comal County on the east to Culberson County on the west. Now, I think you would agree with me, knowing the geography of our State, that this is a distance of better than 400 miles-

probably closer to 500 miles.

A Yes.

Q I think you would probably also agree that a tenable argument could be made that there is at least as great a dissimilarity of interest between the people in Comal County and the people in Culberson County as there is between the people in North Bexar County and the people in Starr County.

A I would agree.

Q So that in this vast expanse of West and South Texas where you have a great area of land and not a great number of people populating it, in order to get an optimum Senatorial District which, in round figures, is 361,000 people the districts simply have to encompass an enormous area; you would agree with that, wouldn't you?

A That is correct.

Q And, you would also agree, I think, that in drawing the 21st District, at least, you are immediately boxed in to some extent by the fact that you have Nueces County on the west, which is on the Gulf of Mexico and which has a population of 237,000 and something, and then Hidalgo and Cameron Counties in the Valley which have 181,000 in Hidalgo and 140,000 in Cameron which are, are they not, logical places to start building

Senatorial Districts of their own.

A This is a fact that you run into; that you cannot get around the basic population centers.

Q And Nueces is too large to combine with the Valley counties to form a district down there, is it not?

A That is correct.

MR. McDANIEL: I believe the record will be sufficiently aided by this map to show what we are talking about. That is all the questions I have.

MR. EASON: That brings to mind about two more questions for me.

RECROSS EXAMINATION

QUESTIONS BY MR. EASON:

Q Now, as Mr. McDaniel has pointed out as far as geographically or miles are concerned, Comal surely is farther distant from Culberson County than Bexar County is from Starr, but I will call your attention to the fact -- Well, let me ask you the question: are there any metropolitan areas at all encompassed in the outlying perimeter of Senatorial District 25?

A San Angelo is within that district, Midland is within that district, and I believe Uvalde would probably be the next largest.

Q What is the population of Uvalde; does it show on there

A It is 17,000.

Q All right. Now, what were your figures that you were carving out of Bexar a moment ago?

A 108,000.

MR. McDANIEL: Bexar has 108,000 --

MR. EASON: In that district.

MR. McDANIEL: -- contributed to the 21st District.

MR. EASON CONTINUES:

Q Are there any, I will say, metropolitan areas -- I will say cities, people that live in and work in or encompassed within a city -- are there any cities in 25 that would be commensurate with the area of Alamo Heights, Terrell Hills, Olmos Park and so forth?

A Midland would be the closest one to it, I believe.

Q But, now, I am not talking about just population, Commissioner. I am talking about -- Now, of course, these people are San Antonians regardless of whether those towns might be little incorporated towns or not, and they work in and derive their income from, and their interest, community of interest lie therein. Would you have such a diversity of community of interest anywhere in this district -- we will count Midland and San Angelo and Uvalde -- as you would have in your opinion between the people of Alamo Heights, Olmos Park and Terrell Hills as compared with Starr, Hidalgo,

Zapata and Duval Counties?

A I would observe that there are certainly Republican oriented areas in parts --

MR. McDANIEL: There are those three on the map.

A -- in parts of Midland County, which in their voting patterns would certainly be parallel to the voting patterns in Bexar County. And, I would guess that those people might conceivably feel put upon to be combined with Llano or Uvalde or Val Verde, but I quite agree with you that these people are San Antonians, but the fact remains that one way or another you can't give away 108,000 votes in Bexar County without giving away San Antonians.

MR. McDANIEL: Let me suggest that we discuss it in another context, if we can. San Antonio has got 108,000 more people in round numbers than they need to make up the two districts which are completely in Bexar County. Now, in round figures what this means by subtraction -- I subtracted it -- it is 253,000. What you are talking about, you have got to pick up a quarter of a million people from somewhere to go with that 108,000 people to make another district. And, wherever you pick it up in that surrounding area is going to require an enormous expanse of space because

those are not large counties.

MR. EASON: Well, now, of course this is as a result of our looking over this map and for the purposes of discussion. There is no reason, that I can see, why the 108,000 that are encompassed here couldn't have been taken in from District 19, which surely in my mind would be more contiguous, more compact and more community of interest, than going clear around the city and carving in on the northeast section to, in my mind, obviously take in the very conservative Republican voters.

MR. McDANIEL: That might be and it might not be, and we might have somebody down in the south part of Bexar County griping about being put in District 21 then. I don't know. But, the point I was discussing with the Commissioner, which I think is probably -- it is a question of choice. You are faced with two not appealing alternatives and you have got to pick one of them.

MR. EASON: Well, only to this extent, and you and I simply are arguing here, apparently.

A I was getting ready to say that.

MR. EASON: I was simply trying to offer an alternative to leave these intact. Actually, the logical thing in my mind would have been to come

directly into San Antonio and not -- at the hazard of using the word -- gerrymander around to carve in the less community of interest, political interest or anything that you could with the people down here.

MR. EASON CONTINUES:

Q Let me ask you this, Commissioner. Would it be your opinion that the people in southern Bexar County, from what you know of Bexar County politics, would have a more unified community of interest with the people to the south than the people from the northeast section of the county and city?

A I am not familiar enough with the makeup of the south part of the county to have an opinion about that. I would guess that anytime you are taking 108,000 people you are going to have a problem with community of interest -- and perhaps a fairly serious one.

MR. McDANIEL: Let me ask this question, then. If you did that, Commissioner, then you would be putting that 108,000, who are the Republicans and conservatives in the north, with either the Latin vote or the West Side or the liberal Democrat vote, so they are still in a dissimilar district, is that correct?

A That is correct.

MR. EASON: That is all.

CROSS EXAMINATION

QUESTIONS BY MR. BERG:

Q For the purpose of the record, my name is David Berg, the Harris County lawsuit. Commissioner, you have testified you did not ignore the Black or the Chicano vote when you were a member of a multi-member district?

A I believe my statement was "I don't think any Representative would knowingly ignore a group, and particularly because of their color".

Q Now, let's make the wild assumption for a moment, Commissioner Armstrong, that somehow in District 15 of Harris County a racist were elected -- just that wild assumption. Because you didn't ignore the needs of Blacks and Chicanos doesn't mean that someone else might not ignore them if he thought he could be elected without them, is that a fair statement?

A I would agree that that situation could occur.

Q Historically and politically Blacks and Chicanos have been ignored by the elected officials of their districts -- Historically and politically, Blacks and Chicanos have been ignored especially in the South by elected officials, have they not?

A In the past this has been historically correct.

Q It is not inconceivable, is it, then that were these districts to elect a racist -- or just people who

thought they could be elected without Blacks and Chicanos -- isn't it possible they could once again be ignored?

A I would agree that that is possible. I think we are engaging in some speculation. Although, I would say it is possible.

Q Of course, my point is just because you paid attention to Blacks and to any minority group doesn't mean someone else would.

A I agree.

Q All right. Now, one last question. I want to show you what has been marked -- though not offered yet -- as Plaintiffs' Exhibit 1 yesterday. It wasn't offered at that time but I am going to offer it now. This is a -- Are you familiar with this map submitted by the Harris -- the Chamber of Commerce of Harris County?

A I have seen that map but I do not believe I have ever seen it in my office -- I don't think it was ever submitted to me. It could have been, but I don't recall that being in my files.

Q It doesn't take more than a quick look, but would you make a comparison of the map submitted by the Chamber of Commerce of Harris County, or of Houston, and compare it to what was finally drawn as the Senatorial District, for instance, in the south and the core area

of the city, the northeast. Do you see a similarity between the two maps?

A Yes, there is a basic similarity.

Q All right. Now, the question I have for you, are the three census tracts that you indicated earlier you were concerned with -- the numbers are too small but it is in the record -- are left in what they call the northeast part of the county -- in their plans.

A In the Chamber of Commerce plans, yes.

Q Would that have made -- We just don't know and we are wondering, would that have made this an area with a higher, much higher, percentage of Blacks than is presently constituted in the new Senatorial District?

A I would have to look at a demographic map to tell.

Q Can you give us anything on that?

A I am not that familiar with it.

MR. BERG: Okay. I would like to offer this into the record. I think it would be Plaintiffs' Exhibit 2, and this is taken from the files of the Attorney General.

(Plaintiffs' Exhibit No. 2 was (marked for identification.

MR. BERG: I don't have anything further.

MR. McDANIEL: I don't have anything further.

Bob Armstrong

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THE STATE OF TEXAS
COUNTY OF TRAVIS

SUBSCRIBED and sworn to before me by the said witness, BOB ARMSTRONG, on this the _____ day of _____, A.D. 1972.

Notary Public in and for
Travis County, Texas

THE STATE OF TEXAS I
I
COUNTY OF TRAVIS I

I, JACK D. SYKES, a Notary Public duly commissioned and qualified in and for the County of Travis, State of Texas, do hereby certify that, pursuant to agreement of counsel, there came before me on the 28th day of December, A.D. 1971, at 3:45 o'clock P.M., at the Supreme Court Building, Attorney General's Office, Austin, Travis County, Texas, the following named person, to-wit: BOB ARMSTRONG, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness; and that the said witness read the same and subscribed his name thereto.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF I have hereunto set

my hand and affixed my Notarial seal on this the _____ day of _____, A.D. 1972.

JACK D. SYKES
Notary Public in and for
Travis County, Texas.

My Commission expires 1st day of June, A.D. 19____.

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MINUTES
LEGISLATIVE REDISTRICTING BOARD
OF TEXAS
1971

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

AUGUST 24, 1971 9:00 a.m.

Old Supreme Court Room, Capitol Building

Meeting was called to order by Lieutenant Governor Barnes.

Present: Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong
Mr. Nola White, representing Attorney General Crawford Martin

On motion of Commissioner Bob Armstrong, seconded by Speaker Mutscher, Attorney General Martin was elected temporary Chairman.

Lieutenant Governor Barnes announced that the Board would hear all of those who wished to make a presentation before the Board.

Representative Curtis Graves was recognized and presented a recommended plan for Harris County.

Mr. Nola White read the following statement on behalf of Attorney General Martin:

Members of the Commission:

General Crawford Martin asked me to read the following statement:

1. I wish to apologize to this Commission for my absence this morning. I have a most urgent appointment in Washington, D.C., with the Justice Department with reference to a critical situation facing Texas at this time in connection with the price and wage freeze. It was my firm conviction that it would be in the public interest to take care of the State's business with the U. S. Department of Justice rather than be here at this meeting.

I would like to make it clear that I will actively participate in the decisions of this Commission; I will personally very carefully review all evidence to be presented here today, and it is with extreme regret that I feel compelled to absent myself from this Commission meeting.

2. It is my hope that this Commission will listen to everyone that desires to be heard in connection with the matters pending before this Commission, regardless of the time it takes to do so. It is also my wish that this meeting be open to the public.

3. In addition to the work of this Commission insofar as redistricting the Senate is concerned, which certainly is the prime and immediate objective of this Commission, it is my hope that this Commission will see fit to instruct its staff to begin work at the earliest possible date on the House apportionment, in the event that the Supreme Court should hold that it is the duty of this Commission to reapportion the House.

The Board then heard presentations by Representative Bill Blythe, Senator Joe Bernal, and Mr. John Cummings and Mr. Leon Moody.

Lieutenant Governor Barnes read the names of those who had submitted plans to the Legislative Council for transmittal to the Board, and announced that copies of the plans would be made available by the Council to interested parties.

There being no more witnesses to appear before the Board, upon motion of Commissioner Armstrong, the Board recessed subject to call of the Chair.

Ben Barnes

Ben Barnes, Presiding

Members of the Commission:

General Crawford Martin asked me to read the following statement:

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MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

September 10, 1971 9:00 a.m.

Old Supreme Court Room, Capitol Building

The Board was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

On motion of Lieutenant Governor Barnes the Board dispensed with the reading of the minutes of the previous meeting.

Mrs. Malcolm Milburn was recognized by the Chair and made a presentation upon a suggested Senate redistricting plan.

There being no other witnesses, on motion of Lieutenant Governor Barnes, the Board adjourned subject to call of the Chair.

Crawford Martin, Chairman

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

September 14, 1971 8:30 a.m.

Attorney General's Conference Room

Chairman Crawford Martin called the meeting to order.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

The Board dispensed with the reading of the minutes of the previous meeting.

The notice of public meeting of the Board was read (copy made a part of these minutes).

Chairman Martin laid out the following resolution:

BE IT RESOLVED BY THE LEGISLATIVE REDISTRICTING BOARD OF TEXAS:

That although this Board stands ready and willing to perform all duties conferred upon it by law, with reference to the apportionment of the State into House of Representative districts, it is the official position of this Board that since the 62nd Legislature of the State of Texas in its regular session in 1971 passed an Act (HB 783) apportioning the State into representative districts, this Board, under the Constitution and the laws of the State of Texas, has no jurisdiction to apportion the State into representative districts; and that the recent judgment and decision of the Supreme Court of Texas rendering said Act invalid did not serve to confer such jurisdiction on this Board, but rather served to place the business of the apportionment of the State into representative districts back into the hands of the Texas Legislature, with it being understood, however, that if the Supreme Court of Texas should determine that the Board is in error in this position, the Board will abide by and act in accordance with the Court's decision.

Lieutenant Governor Barnes moved adoption of the resolution.

Speaker Gus Mutscher read a prepared statement (copy made a part of these minutes), and offered a substitute motion that the Board proceed with dispatch to redistrict the House of Representatives.

The resolution and the substitute motion were discussed.

By voice vote, the substitute motion failed of adoption.

By voice vote, the motion to adopt the resolution was adopted.

On motion of Lieutenant Governor Barnes the meeting was adjourned subject to the call of the Chair.

Crawford Martin, Chairman

NOTICE OF PUBLIC MEETING

Agency: Reapportioning Board of Texas

Date: September 14, 1971

Time: 8:30 a.m.

Place: Attorney General's Conference Room
Seventh Floor
Supreme Court Building
Austin, Texas

Subject: The subject of the meeting is the power of the Board to undertake and accomplish the apportionment of the State into House of Representatives districts and to ascertain the position, if any, to be taken by the Board on such subject.

Said meeting is in the nature of an urgent public necessity because guidelines are urgently needed from the Supreme Court of Texas on the question of the Board's power regarding House of Representatives apportionment, and come to the attention of the Chairman of the Board Supreme Court of Texas probably will not consider the question of its jurisdiction of a mandamus suit with respect to said question until the Board first takes a position on the question of whether or not it will undertake to exercise such power.

2:00 P.M.

Gentlemen: I have serious reservations about proceeding in the manner proposed here today concerning the redistricting of the House of Representatives and I would like to give you my reasons.

FIRST: All of us know that the people of Texas do not want a special session of the Legislature at a cost of approximately one-half million dollars solely for the purpose of redistricting. It seems that we are merely making maneuvers to keep from making decisions.

SECOND: If you take the position here proposed, then the Attorney General, who is supposed to represent this Board in Court being the State's Attorney, must contend that we do not have the authority to act and in effect will be confessing judgment against our authority because that will be the effect of his vote today.

THIRD: On the other hand, if we do redistrict and that plan is then attacked we would at least have done all we can do. And even if a court should finally hold that we lacked the authority we are in no worse position than we are today ——— and at least we have tried.

FOURTH: If the purpose of this resolution today is to "set up" a case for the Supreme Court, that Court may decide that we are asking for an advisory opinion and could dismiss the case on that ground alone. By then our constitutional time may have run out.

FIFTH: There are those in this State who want no redistricting at all and I suggest we would be falling into that trap. I do not think anyone here seriously feels that the Federal Courts will wait until 1976 for a new redistricting bill to take effect.....especially with the present population disparities. This brings about three possibilities. If the Federal Court should hold present districts unconstitutional then all 150 House Members would have to run at large, or a special session would have to be called before January of 1972. The Governor has indicated that he would not call a special session for this purpose.

So I say that we have an obligation to the people of Texas to act and to act soon. To fail to act would be to abrogate our duty to Texas and its citizens. Gentlemen, I will not be a party to that; I therefore respectfully submit this substitute motion:

"I move that this Board proceed with dispatch to redistrict the House of Representatives."

In support of this motion I would remind this Board that to do otherwise will be to invite an untenable position to which I cannot and will not agree.

The very purpose for which this Board was authorized is to meet a situation such as the one presented to us now. Redistricting is not easy and we should not seek the easy way out. I believe that we have both the authority and the duty to perform and we cannot and should not hide behind the courts.

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

SEPTEMBER 30, 1971 9:00 a.m.

Old Supreme Court Room, Capitol Building

Meeting was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

On motion of Lieutenant Governor Barnes the Board dispensed with the reading of the minutes of the previous meeting.

The Board then heard the following:

Representative Dick Reed
Representative Bill Blythe
Representative Joe Allen
Representative Bob Gammage
Representative Fred Agnich
Mr. John Hill
Mr. Mike Hopkins
Mr. Earl Luna
Representative Jack Blanton
Representative Joe Hawn
Representative John Boyle
Mr. Dave Pickett
Mr. Tom Crouch
Mr. Jack Hensen
Mr. Bob Binder
Mr. Lee Halford

Chairman Martin read several telegrams.

On motion of Lieutenant Governor Barnes, the Board recessed subject to call of the Chair.

Crawford Martin, Chairman

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

OCTOBER 6, 1971 9:00 a.m.

Lieutenant Governor's Committee Room, Capitol Building

The meeting was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

On motion of Mr. Armstrong, the Board dispensed with the reading of the minutes.

Chairman Martin then recognized Senator Oscar Mauzy who in turn introduced the following who addressed the Board:

Mr. Victor Robertson, Jr.
Professor Albert W. Alshuler
Mr. Phil Strickland
Joe Locsos
Kenneth Keeth
Alfred Hill

Senator Mauzy then made a presentation to the Board.

Chairman Martin offered the following resolution:

L.R.B. Res. No. 1 By Martin

R E S O L U T I O N

WHEREAS, The Legislative Redistricting Board of Texas assembled on August 24, 1971, in order to carry out its duties as prescribed by Article 3, Section 28, of the Texas Constitution; and

WHEREAS, Article 3, Section 28, contains the provision that "The Legislature shall provide necessary funds for clerical and technical aid and for other expenses incidental to the work of the Board"; now, therefore, be it

RESOLVED by the Legislative Redistricting Board of Texas, That the expenses mentioned above be paid equally from the Legislative Expense Funds of the House and the Senate, by warrant drawn by the Comptroller of Public Accounts on vouchers signed by the Chairman of the Legislative Redistricting Board of Texas, or a person authorized by the Chairman in writing to sign the vouchers, and the presiding officers of the respective houses of the Legislature.

The resolution was adopted.

The Board then heard Mr. John Alaniz.

On motion of Speaker Mutscher the Board adjourned subject to call of the Chair.

Crawford Martin, Chairman

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

OCTOBER 15, 1971 4:00 p.m.

Old Supreme Court Room, Capitol Building

The meeting was called to order by Chairman Martin.

Present: Attorney General Crawford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

On motion of Lieutenant Governor Barnes the minutes of the previous meeting were approved.

Chairman Martin then laid before the Board a proposed reapportionment of the Texas Senate. Chairman Martin signed the official Senate reapportionment document and requested the Secretary to the Board, Mr. Robert E. Johnson, to present the document to each of the remaining members of the Board so that they might exercise their options of signing or not signing the document.

Mr. Johnson then presented the document to Comptroller Calvert, Commissioner Armstrong, Lieutenant Governor Barnes, and Speaker Mutscher and returned it to Chairman Martin.

Chairman Martin then announced that there were three signatures on the document and that this was the number required under the Constitution.

Chairman Martin then asked those who had signed the document to stand and raise their right hands to acknowledge before a Notary Public that they affixed their signatures to the document as the act and deed of the Legislative Redistricting Board of Texas.

The Honorable Crawford Martin, Chairman, Attorney General of Texas; the Honorable Ben Barnes, Lieutenant Governor of Texas; and the Honorable Robert S. Calvert, Comptroller of Public Accounts of Texas, then acknowledged before Mr. James R. Reynolds, Notary Public in and for Travis County, Texas, that they had signed the document as the act and deed of the Legislative Redistricting Board of Texas. Mr. Reynolds then affixed his signature and seal to the document.

Chairman Martin then advised the Board that the Constitution provides that upon the signing of the document it shall be filed with the Secretary of State of the State of Texas and that he would proceed to see that it was properly filed.

The Board then discussed the status and alternative approaches to apportioning the state into representative districts.

On motion of Lieutenant Governor Barnes the Board adjourned subject to the call of the Chair.

Crawford Martin

Crawford Martin, Chairman

MINUTES

LEGISLATIVE REDISTRICTING BOARD OF TEXAS

OCTOBER 22, 1971 4:00 p.m.

Old Supreme Court Room, Capitol Building

The meeting was called to order by Chairman Martin.

Present: Attorney General C. Calford Martin, Chairman
Lieutenant Governor Ben Barnes
Speaker Gus Mutscher
Comptroller of Public Accounts Robert S. Calvert
Land Commissioner Bob Armstrong

Chairman Martin laid before the Board a proposed reapportionment of the representative districts of Texas.

Chairman Martin then recognized Speaker Mutscher who moved to postpone consideration upon the final adoption of the plan until 11 a.m. tomorrow morning (Saturday, October 23) and requested a roll call vote.

Chairman Martin stated the motion and asked the Secretary, Mr. Robert E. Johnson, to call the roll of the members of the Board.

The vote on the motion was as follows: Mr. Speaker, aye; Mr. Comptroller, no; Mr. Commissioner, no; Mr. Lieutenant Governor, no. Chairman Martin announced that the Chair voted no.

Chairman Martin announced that the motion failed of adoption.

Chairman Martin then asked the Secretary to present document to the members of the Board so that they might ... ise their options of signing or not signing the document. Mr. ... son presented the document to each member of the Board ... returned it to Chairman Martin.

Chairman Martin then asked those who signed the ...ocument to stand and raise their right hands to acknowledge before a Notary Public that they had affixed their signature to the document as the act and deed of the Legislative Redistricting Board of Texas.

The Honorable Crawford Martin, Chairman, Attorney General of Texas; the Honorable Ben Ramsey, Lieutenant Governor of Texas; the Honorable Robert S. Calvert, Comptroller of Public Accounts of Texas; and the Honorable Bob Armstrong, Commissioner of the General Land Office of Texas, these acknowledged before Mr. James R. Reynolds, Notary Public in and for Travis County, Texas, that they had signed the document as their act and deed of the Legislative Redistricting Board of Texas. Mr. Reynolds then affixed his signature and seal to the document.

On motion of Lieutenant Governor Ramsey the reading of the minutes of this meeting would be dispensed with and the Chair be allowed to sign the minutes as the final meeting of the Board.

Chairman Martin then announced that the Board was adjourned sine die.

Crawford Martin, Chairman

1853

PX-2

98

Armstrong Dep.

PROPOSED

STATE SENATE DISTRICTS

HARRIS COUNTY

and

FORT BEND COUNTY

1854

SENATORIAL DISTRICTS

Harris County and Fort Bend County

(Five Senatorial Districts)

Core District — Blue

Population: 356,543

South District — Yellow

Population: 357,074

Harris County	304,760
Fort Bend County	52,314

Southeast District — Pink

Population: 358,759

Northeast District — Green

Population: 360,419

West District — Orange

Population: 361,431

JUSTIFICATION

This Senate Redistricting Plan:

1. Avoids dismembering of Harris County.

2. Involves only one other county (Fort Bend), which has a close community of interest with other residents of the district in which it is placed.

3. Does not disenfranchise any minority group.

4. Total population within each district is almost equal.

5. Follows census tract boundaries--does not divide any census tract.

6. Does not pair any present incumbent against another. Incumbents, who have indicated they will seek reelection, live in districts composed of people whose past voting patterns are compatible with the political philosophy of such incumbent.

7. Complies with all known court rulings on legislative redistricting and therefore should stand up in court.

1856

CORE DISTRICT

Census Tracts	Population
125	1,391
126	7,448
201	10,834
205	16,235
208	9,231
316	5,544
401	5,963
402	11,551
403	7,058
404	6,805
405	9,340
406	5,978
407	10,349
421	3,698
440	16,661
441	3,847
442	12,995
443	23,189
444	18,175
447	13,844
501	136
502	3,211
503	13,777
504	4,097
505	6,228
506	9,901
507	8,603
508	5,925
509	12,867
510	6,885
511	6,951
512	7,617
513	3,501
514	7,709
515	8,023
516	7,778
517	13,449
518	13,561
527	9,680
528	2,033
529	4,513
Total Core District	356,543

1857

SOUTH DISTRICT

Census Tracts	Population	Census Tracts	Population
302	5,813	343	7,187
308	7,024	344	1,706
314	7,621	345	6,601
318	19,071	346	1,970
319	5,786	348	11,527
320	15,447	408	3,381
323	8,408	409	3,963
324	11,900	410	5,973
325	9,213	411	1,466
326	7,729	412	9,956
327	10,399	413	8,654
328	16,144	414	8,948
331	1,029	415	14,834
332	6,479	416	18,611
333	2,742	428	8,476
334	5,559	429	4,616
335	12,921	430	3,439
336	1,253	431	6,951
337	427	Fort Bend County	52,314
338	2,641		
339	10,017	Total South District	357,074
340	7,451		
341	347		
342	1,080		

1858

SOUTHEAST DISTRICT

Census Tracts	Population	Census Tracts	Population
121	3,719	347	18,217
122	4,627	349	9,537
123	2,042	350	8,877
124	4,822	351	4,009
302	6,567	352	274
301	10,545	353	11,445
303	3,581	354	0
304	14,304	355	14,403
305	11,318	356	13,155
306	7,634	357	18,931
307	12,519	358	4,302
309	9,723	359	4,861
310	6,322	360	12,820
311	9,395	361	126
312	7,979	362	131
313	9,801	363	991
315	7,663	364	760
317	15,484	365	5,740
321	11,704	366	6,791
322	11,760	367	540
329	10,526	368	6,263
330	5,413	369	2,262

(Southeast District - page 2)

Census Tracts	Population	
370	746	
371	9,490	
372	596	
373	10,492	
374	5,472	
375	74	
	358,759	Total Southeast District

1860

NORTHEAST DISTRICT

Census Tracts	Population	Census Tracts	Population
203	13,497	233	1,634
204	4,187	234	2,590
207	10,159	235	3,931
208	14,711	236	1,747
209	875	237	625
210	11,981	238	2,560
211	10,516	239	5,490
212	9,563	245	4,490
213	5,311	246	1,499
214	3,586	247	332
215	16,983	248	415
216	6,796	249	2,355
217	11,807	250	458
218	11,190	251	1,917
219	5,964	252	558
224	14,239	253	1,063
225	15,844	254	805
226	3,014	255	1,681
227	5,818	256	445
228	3,281	257	578
229	1,790	258	4,632
230	18,529	259	6,440
231	6,965	260	166
232	5,844	261	1,814

(Northeast District - page 2)

Census Tracts	Population	
262	857	
263	4,671	
264	3,366	
265	1,850	
266	4,997	
267	4,849	
268	1,791	
269	6,416	
270	4,611	
271	3,170	
272	4,390	
273	4,026	
274	1,368	
275	81	
519	13,602	
520	12,975	
521	10,253	
526	16,491	
	360,419	Total Northeast District

1862

WEST DISTRICT

Census Tracts	Population	Census Tracts	Population
220	6,904	437	146
221	2,478	438	7,795
222	6,444	439	3,866
223	12,251	445	22,873
240	8,469	446	21,046
241	3,821	448	215
242	865	449	179
243	1,733	450	185
244	1,901	451	273
417	12,640	452	3,422
418	6,369	522	11,967
419	14,169	523	11,908
420	14,091	524	3,121
422	16,486	525	10,659
423	17,616	530	8,929
424	12,590	531	13,744
425	14,997	532	12,736
426	7,640	533	10,695
427	6,118	534	1,734
432	2,345	535	282
433	6,359	536	2,304
434	880	537	1,283
435	5,937	538	1,994
436	10,457	539	1,795

(West District - page 2)

Census Tracts	Population	
540	2,102	
541	1,826	
542	2,230	
543	492	
544	37	
545	4,492	
546	399	
547	457	
548	352	
549	396	
550	428	
551	1,236	
552	1,191	
553	2,734	
554	435	
555	941	
556	1,731	
557	460	
558	2,508	
559	2,173	
	361,431	Total West District

ORAL DEPOSITION OF ROBERT E. JOHNSON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL VS. BEN BARNES, ET AL	NO. A-71-CA-142
DIANA REGESTER, ET AL VS. BOB BULLOCK, ET AL	NO. A-71-CA-143
JOHNNY MARRIOTT, ET AL VS. PRESTON SMITH, ET AL	NO. A-71-CA-144
VAN HENRY ARCHER, JR. VS. PRESTON SMITH, ET AL	NO. A-71-CA-145

APPEARANCES

Mr. David R. Richards, of Austin, Texas,

Appearing on behalf of Plaintiffs, Diana Regester, et al

Mr. Robert M. Greenberg, of Dallas, Texas

Appearing on behalf of Plaintiffs, Johnny Marriott, et al

Mr. Mickey McGuire
Mr. Nathan W. Eason
Of San Antonio, Texas

Appearing on behalf of Plaintiffs, Van Henry Archer, Jr., et al

POOR COPY

APPEARANCES - (Cont'd)

Mr. Stuart Hatkin
Mr. Davis Berg } Of Houston, Texas,

Appearing on behalf of Plaintiffs, Curtis Graves, et al

Mr. Walter Irvin
Mr. Cleo Steele } Of Houston, Texas,

Appearing on behalf of Plaintiff Intervenors, Washington, et al in the Tyler Case

Mr. Ed Idar, Jr., of San Antonio, Texas,

Appearing on behalf of Intervenors in the Tyler Case

Mr. E. Brice Cunningham, of Dallas, Texas,

Appearing on behalf of Intervenors, Conrad, et al

Mr. Earl Luna, of Dallas, Texas,

Appearing on behalf of Defendant, Roy Orr

Mr. Sam McDaniel, Assistant Attorney General of Texas, Austin, Texas,

Mr. Al Curry, of the firm of Fulbright, Crooker, Freeman, Bates & Jaworski, of Houston, Texas,

Appearing on behalf of Defendants

. . . . . .

DEPOSITION of ROBERT E. JOHNSON, a witness of lawful age, taken on behalf of the Plaintiffs, Diana Regester, et al, in the above entitled causes, pending in the District Court of the United States for the Western District of Texas, Austin Division, pursuant to the notice heretofore issued and the agreement hereinafter set out, before Harry L. Wear, a notary public in and for Travis County, Texas, at the Supreme Court Building, in the City of Austin, Travis County, Texas, at 2:00 o'clock, p.m., on the 27th day of December, 1971.

(Thereupon, the parties agreed that said deposition would be taken on the same agreement as outlined in the beginning of the deposition of Mr. Crawford C. Martin, which is as follows:

MR. RICHARDS: Do you want to consider, Sam, that this is taken by -- I guess it is taken pursuant to notice; inasmuch as General Martin is a defendant, do you -- he is a defendant in some of the cases?

GENERAL MARTIN: I am a defendant in some, and not in some of the others.

MR. RICHARDS: I didn't know whether Sam wanted to treat it just by notice, or how you wanted it.

MR. McDANIEL: I have no objection to treating it as if it were taken by notice, and my only thing is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And so we -- do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving General Martin's unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present General Martin's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. McDANIEL: That is correct. That is correct.

MR. LUNA: For the State Chairman, we do not waive our right to cross-examine him at the trial, and in the event he should not be available at trial, we do not then waive the use of this -- if he is available, but is not placed on the witness stand, we don't waive our right to cross-examine him at the trial.

MR. RICHARDS: Well, let me be sure I understand. Suppose that General Martin is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of trial?

MR. LUNA: I reserve the right to examine him in person.

MR. RICHARDS: Well, then, at least you are on notice from me that it is going to be my position that if you have questions to ask General Martin, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are here pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as first-hand testimony.

MR. LUNA: I understand.

MR. RICHARDS: All right. Sure.

MR. LUNA: I may ask him some questions today, but I am simply not waiving any of my rights by participating in this deposition that I don't automatically waive thereby.

MR. RICHARDS: Is there anybody else who has got a position, attorneys who are present who want to put any position of record in the case?

ROBERT E. JOHNSON,

a witness named in the notice heretofore issued, being first duly sworn in the above cause, testified on his oath as follows:

DIRECT EXAMINATION

Questions by Mr. Idar:

Q Will you please state your name for the record?

A Robert E. Johnson.

Q What is your position?

A Executive Director of the Texas Legislative Council.

MR. IDAR: Mr. McDaniel, are we going to take this deposition under the same agreement that was made in connection with the one relating to Mr. Martin?

MR. McDANIEL: Yes, that is acceptable to me.

MR. EDAR: Okay.

Q Are you the Director of the Texas Legislative Council?

A Yes, sir.

Q How long have you held that position?

A Since September of 1963.

Q What did you do prior to that?

A Practiced law in Dallas.

Q Are you from Dallas?

A Yes, sir, originally.

Q I wonder if you could summarize for us right quick, what are the functions of the Texas Legislative Council?

A It is a statutory creation of the Legislature. It is made up of ten members of the House, five members of the Senate; the Lieutenant-Governor is Chairman, and the Speaker is Vice-Chairman of the Council. We have a staff, and generally we work for the Legislature in drafting legislation, doing research, studies, recodification and revision of statutes.

Q Are you funded entirely by the appropriations from the Texas Legislature?

A No, sir. We do have -- the majority of our funding is from the General Revenue Fund of the State, but we do have an inner-agency contract with, I believe,

the Commission for the Blind to do a study for them, which, on a -- I think it is an eighty-twenty basis, funded by the Federal Government.

Q Is that the only program, shall I say, where you have federal funds involved, or are there any others?

A That is the only one that has federal funds involved, yes, sir.

Q Now, with respect to the Texas Legislative Redistricting Board, which is a Board created by the Texas Constitution, what was your relationship to that particular Board during the course of their proceedings for the purpose of adopting a Senate and House Redistricting Plan?

A Generally, we perform the same function for them that we do for the Legislature, basically the drafting, drawing of maps, and the drafting of the instrument which was filed with the Secretary of State as the order of the Board.

Q You are the director of the staff?

A Yes, sir.

Q How big a staff do you have? Can you give me some idea?

A About sixty people, I believe.

Q Okay. As far as the Legislative Redistricting Board, in connection with the work that you and your staff

did for that Board, did you do that work at the direction of the Board?

A Yes, sir, either the Board -- when you say "the Board," do you mean the total Board or the individuals? But they were for the Board, yes, sir, the members.

Q Let me ask you this: Let's distinguish between the Board and -- I'll say Board and individual members of the Board. Number one, did the Board as a Board give you any directions or furnish you with any guidelines or any instructions as to your work for them in drafting proposed redistricting plans for the House and the Senate?

A Yes, sir, they did.

Q Remember, my question bears to the Board as a whole.

A The Board?

Q I say Board as an official body.

A Yes, sir, on the final plans we were advised to do these final plans and present them to the Board to be adopted or for their consideration.

Q Did the Board furnish you with whatever instructions we are talking about in writing?

A No, I don't recall any written instructions.

Q Were you present -- I understand there was -- I don't recall exactly -- four or five official meetings of

the Board. Were you present ---

A Yes, sir.

Q --- at those meetings?

A Yes, sir.

Q Do you recall how many actually were held, official meetings of the Board?

A No, sir. As you say, there was four or five, perhaps six.

Q And you were present at all of them?

A Yes.

Q These were all public meetings?

A Yes, sir.

Q Were you present at any meetings of the Board that were not public?

A I think that there was one meeting held in this room here where the Board adopted a resolution upon which the lawsuit was predicated on whether or not they should do the House redistricting. I think they adopted the resolution stating that they would not redistrict the House Representatives, and that was the basis on which the mandamus action was brought in the Supreme Court to determine whether or not they should redistrict the House.

Q This was prior to the Court acting?

A Yes, sir.

Q After the Court acted and issued the mandamus, was there a further meeting on this issue, as far as the Board was concerned, that you were present at?

A On what issue?

Q On the House issue?

A Yes, sir, after they adopted -- the chronology may be a little mixed up, but as I recall, after they adopted the Senate Bill or the Senate Resolution, they then proceeded to go into -- to hear testimony on the House.

Q Okay. Now, was it your staff altogether, or was it only your staff that worked on the House Redistricting Plan, or did you have other people collaborating with you?

A I can't say if there were other people collaborating with us. I know there were other people working on it. Whom, I don't know. I know that there were individual members would send us plans.

Q Who were the members of your staff that worked on the House Redistricting Plan that was ultimately adopted by the Board?

A All right. Let's see. John Potter, the Assistant Director, a young man named Mark -- and I can't even recall his last name now -- he was part-time with us. He is a student down at San Marcos, who actually

did the drawings. Bob Freeman ---

MR. CUNNINGHAM: F-r-e-e-m-a-n?

A Yes, sir. There were any number of people that did proofing.

Q (By Mr. Idar) I am concerned with those that did the principal work involved here, not some clerk or somebody who might have proofread something. Would you say this was the key people?

A I think that is the case.

Q These were members of the Texas Legislative Council staff?

A Yes, sir.

Q Did you do any work with them? Did you work closely with them?

A All right. In addition to yourself and the three people you recited, were there any other staff people belonging either to the staff of the Lieutenant-Governor, the Attorney General or any of the other members of the Legislative Redistricting Board, any of the staff people, did they work closely with you in drafting the House Plan, and, if so, can you give us their names?

A Not as I recall. As I say, any number of people would send us maps and ---

Q Let me rephrase my question. We have a couple of

names that cropped up. I think it was people associated with the Lieutenant-Governor, a Mr. Hoeser and -- who is the other one?

MR. CUNNINGHAM: And Spellings.

Q (By Mr. Idar) And Spellings. Do you know those people?

A Yes, sir, I do.

Q Did they work with your staff in drafting the House Plan?

A I don't think they worked with the staff. I think they would probably send us maps or plans, or perhaps they would talk to Mr. Potter or myself on occasions about that.

Q Well, you are familiar with the plan that the Board ultimately adopted?

A Yes, sir.

Q The House Plan?

A Yes, sir.

Q Was that plan drawn up by yourself and your staff?

A Yes, sir.

Q And do you know to what extent Hoeser and Spellings had an input into that?

A No, sir, I don't. I know we did -- let me explain. Most of the work we did would be, you know, quite technical, when they would go in and, say, cut out

the people of this area. Take Wichita Falls or Abilene, and things like that, places like that, you know, take so many people, and generally what we would do on a situation like that, we had a plan adopted by the Legislature during the session, and generally there was some agreement on what they had done, and so in those areas we left it pretty well as the Legislature adopted it.

Q Did you use the plan that was adopted during the Regular Session as a sort of a kick-off point for drafting yours?

A Only the areas that I mentioned, some of the areas that I mentioned, like Abilene, Odessa, Wichita Falls, are things that come to mind specifically right now.

Q All right. Going on to other staff members who might have participated, do you recall whether or not any of the staff members of the Attorney General's Office participated to any large extent in the drafting of the House Plan? And I might, while we are at it, to save time, let me ask you both as to the House and the Senate.

A Yes, sir, they participated to the extent of advising me of, you know, drawing a constitutional bill. A prime consideration was population, or the consideration to try to hit it as closely as possible, and

regarding the splitting of county lines, particularly with reference to the House situation, where you couldn't -- not with specific county lines, but the fact that you should keep them at a minimum.

Q Do you recall who were the members from the Attorney General's staff who participated in this matter?

A I think Mr. Walker was in the office on occasion, and Mr. McDaniel. I may be in error, but I think Mr. Bailey.

Q All right. What about staff members -- let me rephrase that. What about members of the staff of, say, Mr. Calvert? Did any of his staff members participate to any extent?

A Mr. Calvert's staff people?

Q Yes.

A No, sir, not that I know of.

Q What about Mr. Armstrong, the Land Commissioner?

A There were some people on his staff came over. I know we gave them a whole lot of maps, you know, blank maps, for them to work with, but I have no idea who those people were. They would just come over and get the maps. He would call me up and say, "We want so many maps," and we would give them to them.

Q Apparently, their participation was not to the extent

of that of Nesser or Spellings or some of the other people from the Attorney General's Office?

A They may have, you know, without going through us. There was no requirement they go through us. They could have talked to the Attorney General or Lieutenant-Governor or the Speaker.

Q What about people associated with the Speaker of the House, Mr. Hutcheson?

A Yes. I know there were several maps prepared, several plans presented, or ideas put forth by Mr. Jones, who is a Representative from out at Lubbock, who was Chairman of the Redistricting Committee in the House during the session. I know that Gus drew up several plans himself, if I am not incorrect.

Q Would it be a fair statement -- I am trying to sum this up, based on newspaper publicity, would it be a fair statement that few, if any, of the recommendations made by the Speaker or people associated with him were actually adopted or incorporated into the plan that was actually adopted by the Board relating to the House?

A I think that is a fair statement, yes, sir.

Q Getting back to what I started to ask you awhile ago, you indicated to us that you did receive some type of instructions or guidelines from the Legislative

Redistricting Board, acting as a Board. Was this in the form of a motion, resolution, letter, or ---

A Just discussions up there through meetings, or maybe after the meetings, just told us, "Get with it and start drawing up some plans," and we drew, as I say, any number of plans.

Q But did they give you some indication as to -- well, let's get to the meat of the whole thing. Did the Board at any time give you any guide as to whether you should strive for multi-member districts in the major counties, or for single-member districts?

A No, sir, they never did give us any instructions on that.

Q The Board didn't instruct you on that point?

A No, sir.

Q Don't you consider that should have been a primary policy decision that should have gone into the formation of the Redistricting Plan?

A That was a policy decision for them to make, yes, sir.

Q Would that policy decision be within your function, or that of your staff?

A No, sir.

Q Or any other staff members of the different members of the Board working on this project?

A No, sir.

Q As far as you are concerned, this is a policy decision that had to be made by the Board itself?

A Yes, sir.

Q And you never did receive any specific instructions from the Board, acting as a Board, on that particular point?

A No, sir.

Q Did you ever receive any instructions from any individual member of the Board?

A Only when -- and I don't know who received it, received a map from Harris County, and said, "This is the way it will be in Harris County."

Q Well, now, who said that?

A I have no idea.

Q You say you received a map from Harris County?

A Yes, sir.

Q Showing single-member districts?

A Yes, sir.

Q Do you know who drafted it?

A No, sir.

Q You don't know who you got it from?

A No, sir.

Q But was it from one of the members of the Board?

A Yes, sir, I am sure it was. Mr. Potter would probably

who actually gave him the map.

Q Well, my question is, who gave it to you?

A I think it was Mr. Potter.

Q Well, now, he was one of your staff members?

A Yes.

Q Did you determine from him who gave it to him?

A No, sir. I may have at the time, but I don't -- certainly don't recall now, sir.

Q Was the plan that was eventually adopted by the Board, was it the same as this particular plan you are talking about that Mr. Potter was given by somebody?

A Yes, sir, one of the final plans that was adopted, the one that was adopted, we did receive.

Q In other words, as far as Harris County is concerned, the plan that was originally adopted by the Legislative Redistricting Board, that is, Harris County, as far as that plan is concerned, was that substantially the same as the plan that you say one of the members of the Board turned over to Mr. Potter?

A Yes, sir, I think it was exactly.

Q All right. Now, did anything similar happen as to any other counties in the State?

A No, sir.

Q Was that the only county in which you were handed a map of the Redistricting proposal that was eventually

incorporated into the one adopted by the Board?

A No, sir, I think that -- I am trying to think.

Q How about Dallas County? Were you ever told by the Board or -- well, let me ---

A Wait a minute. I think maybe -- do you mean with regard to major metropolitan districts, that they were single-member districts?

Q Yes.

A No, we didn't get any other one. I was trying to think if some of the other counties were cut up and someone would send a map and say that this had been agreed on, and cut it up this way, or use the House Bill, or make this minor change or that change.

Q Let me ask you something -- let me ask you this: What about Jefferson County? Did you receive a map already drawn on that one?

A No, sir, we did not.

Q How about Hidalgo County?

A No, sir, we did not.

Q El Paso?

A No.

Q Bexar?

A No, sir.

Q All right. Now, let me get back to what I started a minute ago. It is my understanding that at no time

did you receive any sort of instructions, either from the Legislative Redistricting Board or from any individual member of the Board, giving you any guidance as to whether you should strive for either multi-member or single-member districts in the major counties?

A I certainly don't recall any instructions to that effect.

Q Well, now, the plan that was ultimately adopted by the Board wound up with Harris County being the only major county in the State with single-member districts. The rest of them were thrown into multi-member districts. Who made the policy decision to do that? Was it yourself?

A No, sir.

Q Who did?

A I assume it was the Board acting.

Q You say you didn't receive any instructions from the Board?

A I say the Board acting outside of my knowledge. We received a map, and Mr. Potter said, if I recall correctly, "This is the map," and evidently it was what they wanted, because they had maps when it was presented, and they did adopt it.

Q I thought you had told us that the map that Mr. Potter

gave you related only to Harris County, or am I mistaken? Was it a map relating to the entire State?

A No, sir. If you are familiar with the maps, they are, you know, a pretty good-sized map, and this was a map of Harris County cut up into individual districts.

Q So we have already established that as far as Harris County was concerned, Mr. Potter did give you a map that one of the members of the Board apparently turned over to him, and as far as Harris County was concerned, whatever that map incorporated was the same thing that was incorporated in the final plan that was adopted by the Board?

A Yes, sir.

Q But my question is as to the other major counties -- now, you have indicated -- well, my question was, who made the policy decision that all of the other major counties were to be allocated or placed into multi-member districts? You say you didn't make it. You say you assume the Board did, but, yet, you have testified ---

A The Board did it when they adopted the bill or the resolution, it seems to me.

Q Of course, that is after the whole thing was drawn. My question precedes that. I am trying to determine,

when you got your staff together, you needed to know whether you were going to single or multi-member districts in Dallas, Bowie County, El Paso, the other major counties; did you give your staff any instructions as to what to strive for?

A No, sir, because I didn't receive any instructions other than those regarding Harris County.

Q Well, how did we wind up with a map that reflected multi-member districts for every major county in Texas except Harris County?

A The Board adopted it.

Q That's not my question.

A You asked how we wound up with ---

Q Well, let me back up. How did your staff determine to come up with that sort of a plan?

A Well, if I recall correctly, we got the one on Harris County cutting it up into individual districts, and the rest of them were at large. That is the only county they were going to set up in individual districts.

Q Well, you still did not answer my question. How did the staff determine that they would not cut up the other major counties into individual districts?

A Because we didn't receive any -- we just did what we were told. Now, when they told us to cut Harris

County up, we cut it up. When they said run the others at large, we didn't touch them.

Q All right. Now, you were told to run the others at large?

A Uh-huh.

Q Now, who told you that?

A I don't recall. I think it was just general consideration. I have no independent recollection.

Q So the best you can recollect is that they told you to cut up Harris, and then they told you to run the others at large?

A Yes, sir; and running them at large is no problem.

Q And you are assuming that the Board did that?

A I know they did that.

Q Were you present at a meeting of the Board where this was decided?

A When they adopted the resolution setting up the plan, yes, sir.

Q Again we are going back to the final plan that was adopted. I am trying to pin down -- now, we have been going at this all day, with the Attorney General this morning, and now with yourself. Somebody had to make the policy decision that the staff would act on ---

A Yes, sir.

Q ---as to whether to go for single or multi-member districts in these major counties. Now, can you tell us who made that decision?

A The Board made the decision.

Q At an official meeting of the Board?

A Yes, sir, the final ---

Q Were you present? Do you recall anybody making a motion to that effect?

A When they signed the resolution.

Q Well, ---

MR. McDANIEL: May I try to help you out a little bit?

MR. IDAR: Sure. I would like to get to the bottom of this.

MR. McDANIEL: Well, I know you would, and that's why I might interject this. When they drew the plan for the State and put it into districts for the House of Representatives, the first thing that was done was to draw the plan for the State. Then, you make a decision -- each metropolitan county is by itself. Now, if you are not going to divide it into single-member districts, then that is the end of the matter right there. There is no further decision to be made.

MR. IDAR: Except that ---

MR. McDANIEL: You just leave it like it was drawn in the plan, with a certain number of Representatives in that county. The only county that it was determined to divide into single-member districts was Harris County, and that was, of course, the Board decided to do that, and sent instructions for doing it. They simply did not do that as to the other metropolitan counties.

MR. EDAR: All right. But the mere fact that they made no decision as to the other metropolitan counties, that means that they were, in effect, deciding that those counties were to be given multi-member districts?

MR. McDANIEL: That is correct.

MR. EDAR: All right. Now, what I am trying to determine is, who made that decision? Do you have any official minutes of the Board that might reflect this?

MR. McDANIEL: The decision that you are talking about, it was never made in the context of choosing between multi and single-member districts. That's what I am trying to drive at. It was made in the context of deciding whether or not they would use single-member districts in the other counties. They decided not to, so they just left the overall State

plan drawn as it was, with Harris County divided up, and with the others undivided.

MR. CUNNINGHAM: The problem I am having is, who made this decision?

MR. McDANIEL: The Board did.

MR. CUNNINGHAM: When?

MR. McDANIEL: When they decided to make the plan, adopted a plan that did not divide up the metropolitan areas.

MR. EDAR: I am trying to get--now, a staff that is going to be faced with drafting a redistricting plan for the entire State of Texas has to have some instructions, some guidelines as to -- to follow in drafting this plan. I know that the Board adopted the ultimate plan. What I am trying to arrive at is, at what time was the policy decision made that every major county except Harris County was going to be given multi-member districts?

(Further discussion was had off the record, after which the proceedings were resumed as follows:

A I probably assumed on my part, when they set up Harris County this way and left the others alone, and I assume the Board made the decision, and I think we verified it when they did adopt the plan, but I have no knowledge of it.

Q In other words, you are trying to tell us that the Board instructed you to cut up only Harris County, and you assume that they wanted to leave the other major counties with multi-member districts?

A I think it is probably more than assuming. I think they said that Harris County was the only one that was going to be cut up, or something like that.

Q Now, I believe you indicated you are an attorney?

A Yes, sir.

Q I suppose that-- were you give any guidelines as to the law as it would bear upon redistricting?

A In what respect?

Q Well, for example, were you given any guidelines as to what you were supposed to do with relation to minority groups in drafting this plan, the Blacks and Mexican-Americans, for example, or any other political groups? I believe in some circumstances the Republican Party might enter into the political element.

A No, sir, I don't think I received any instructions.

Q Were you familiar with some of the Court decisions, particularly the Chavez case that was decided in June, that speak when it comes to redistricting plans that address themselves to the issue as to whether -- as to how you are to handle minority

groups so that their voting strength will not be diluted or cancelled?

A Yes, sir, I am familiar with the case generally.

Q All right. Are you familiar with the law on this question, that any redistricting plan, whoever is drafting it, whoever is going to adopt it, must be sure that it is not the kind to minimize or dilute or cancel the voting strength of a significant minority group or political elements in the community?

A I think so, yes, sir.

Q Well, were you given any -- by the Board itself, were you given any cases or any Law Review articles bearing on this question?

A No, sir.

Q You were not? Are you fairly familiar with the State of Texas? Have you done any amount of traveling throughout the State?

A Yes, quite a bit.

Q Are you familiar with Bexar County?

A Yes, sir, I know generally about Bexar County.

Q Have you been in San Antonio?

A Oh, yes, sir.

Q Are you familiar with Dallas and Fort Worth?

A Yes, sir, I used to be. They are growing so fast --

so much now, that I am amazed at the constant growth of the cities.

Q Are you familiar with the fact that in Texas statewide, that the population is about twenty per cent Mexican-American?

A Yes, sir, generally; that is, you know, a round figure.

Q All right. And the Black population is, I think, roughly twelve to fifteen per cent?

A Yes, sir.

Q Are you further familiar with the fact that the Mexican-American, by and large, as a group, is concentrated in the southern portion of the State?

A Yes, sir.

Q And the Black as a group is concentrated largely in the eastern portion of the State?

A Yes, sir.

Q Are you further familiar with the fact that these two particular groups in some of our major cities have a tendency, on for whatever special reason, have a tendency to settle in certain sections of the city?

A Yes, sir, I think generally I know that.

Q Have you ever heard of the west side of San Antonio?

A Yes, sir, but I can't recall which is the west side and which is the east side. I don't recall which is

which.

Q But it has got a reputation as being, you might say, the Mexican portion of San Antonio? Have you heard of it in that context?

A I probably have.

Q Are you familiar, further, with the fact that in Dallas there are certain areas that are known to be Black areas?

A Yes, sir.

Q And you also have, I believe, a couple of significant areas that are known to be Mexican-American areas?

A Yes, sir.

Q West Dallas and Little Mexico; have you ever heard of them by those terms?

A Yes, sir.

Q And I believe the same thing would apply to Fort Worth. You have certain areas there where they are known to anybody residing there, or that is familiar with the City, to be Black areas?

A I'm sure that's true.

Q And the same thing with the Mexican-Americans?

A I am not too familiar with Tarrant County.

Q Have you ever heard of the south side of Stop Six in Fort Worth?

A No, sir, I haven't.

Q All right. Now, did you or your staff ever, in drafting the plan under the instructions of this Board, ever consider what the effect of this plan is going to be on the Mexican-American and the Black population in these particular areas that I have been discussing?

A No, sir.

Q Were you the least bit concerned that you might wind up with a plan that might dilute or minimize or cancel out the voting strength of these particular groups?

A I didn't know anything about where they were situated, except generally, and ---

Q All right. Let me ask you this: Now, what statistical information did you follow in drafting this plan? Did you have the 1970 U.S. Census figures?

A Yes, sir.

Q You had them county by county?

A Yes, sir.

Q And you had them census tract by census tract?

A Yes, sir.

Q And block by block?

A No, sir.

Q Not block by block?

A No, sir.

Q But is it true that the 1970 census figures that you had which went down to the level of the census tract level, are you familiar with the fact that these would give you a breakdown as between Whites and Blacks?

A There is a publication out that does give that information, yes, sir.

Q Well, wasn't this -- weren't these figures available at the time you were working on this House Redistricting Plan?

A Yes.

Q In other words, you knew, or you could have known if you had wanted to, or if your staff wanted to take the trouble, you could have plotted it as to each major city, based on 1970 census data? Mr. Johnson, your staff did have available, did it not, census tract data for 1970 that would reflect the breakdown between Whites and Blacks in each census tract throughout the State of Texas?

A Yes, sir.

Q And if you had wanted to, you could have plotted this information out and determined as to each county and each individual city those areas that would be predominantly Black in contrast to predominantly White; is that true?

A Yes, sir.

Q Now, did you have similar data relating to the Mexican-Americans?

A No, sir, we did not.

Q Do you know whether that data is available as of today?

A I understand from talking to the Census Bureau that it will be available the first part of the year on computer tape.

Q Uh-huh.

A And I want to say the first part of the year, I think the first quarter of the year, on computer tape.

Q You don't know exactly by when this might be available?

A I think it is February or March.

Q Will this be available for the entire State, or only selected counties, or cities?

A I think that it will probably be available for the entire State. I would have to check again. There again, Mr. Potter will know. He worked with the MR & MR on the computer tape run-out on that operation.

Q So, you did have census data for the entire State on which you could have determined those tracts that would be predominantly Black and predominantly White, but the same data for the Mexican-American was not

available?

A Yes, sir, that is correct.

Q Now, you did have this kind of data for the Mexican-American from the 1960 census; isn't that correct?

A Yes, sir.

Q Was there any effort made by your staff to update the 1960 census data as to the Mexican-American to see whether there were other sources of information that might have updated some of this so that you could have taken that into consideration in drafting a redistricting plan for the House and Senate?

A No, sir.

Q Is it your position, then, that you and your staff really didn't concern yourselves as to what might be the ultimate effect on the minority groups of the House Redistricting Plan that you were working on?

A That is correct.

Q Did the Board ever bring this concern to your attention?

A No, sir.

Q Were you ever told by the Board, as a Board, or by any individual member of the Board, that you should bear in mind the Mexican-American and the Black minority groups throughout the State?

A No, sir.

Q Was that considered at all in the plan that was drafted by your staff and ultimately adopted by the Board?

A Drafted by my staff?

Q And adopted by the Board?

A I have no knowledge of what went into their minds, how they adopted it, but our staff -- it was adopted by the Board, yes, sir. I see what you mean. Yes, sir.

Q Did you, as related -- as regards, say, Dallas County or Bamar County, did your staff make any studies to see, based on the Black versus White breakdown, for example, what would be the concentrations of those two population groups in either county and what the effect of single-member districting would be as to, for example, how many Black districts might result on a single-member district basis?

A I am trying to think. We worked on it during the session, too. We did quite a bit for the individual members during the session, and that may have -- we may have done that during the session, but I don't recall specifically. I didn't work with it during the session.

Q Did your staff work with it?

A Yes, sir. Mr. Potter, there again, would probably have ---

Q But as far as the work that you did for the Board, you didn't do any work specifically along these lines?

A No, sir, I don't recall any. We may have had it available as a result of previous work we had done, but I certainly don't recall any, no, sir.

Q I think I asked you about Dallas County. I presume that the same thing would apply to Bexar County, that you didn't do any work there. I believe I asked you about Dallas and Bexar in relation to the Black population. I would like to address the same question as to the Mexican-American population. Did you all, as far as Bexar County is concerned, go to the trouble, either by using 1960 census data, which is apparently the last available for your purposes, did you go to the trouble of trying to plot it out in San Antonio to see what portion of that City or that County, Bexar County, would be classed as a Mexican-American area?

A I don't have any independent recollection that we did. As I said, we may have done it for Senator Bernal during the session, but I have no independent recollection of doing it for the bill.

Q Do you recall the Board asking you to do that?

A No, sir.

Q They didn't ask you?

A No, sir -- I mean, yes, sir, they didn't ask me. There is a double negative there.

Q They didn't ask you. Didn't it concern you as the Director, and your staff, in drafting this plan and as an attorney being familiar with the holding in the Chaves case that you needed some guidance from the Board as to what they wanted to do on this matter as it related to the minority groups, the Mexican-Americans and Blacks?

A As a staff, we did what we were told. We assumed they had made the decisions. You had the Attorney General on the Board, and a staff there. We did not concern ourselves with what -- those things, just drawing the lines, and that is a difficult job in itself.

Q I think in the plan you ultimately wound up with, besides in the major counties, there are several counties that -- of which portions were cut off and assigned to districts composed of other counties?

A Yes, sir, that is correct.

Q One of those was, I think, Hidalgo County, took a little bit of that?

A Yes, sir.

Q And threw it into another area; and Jefferson County?

A And over in Cameron County, and Jefferson County is

split.

Q When you were working on Jefferson County, for example, were you familiar with the demographic characteristics of the county? Did you take any trouble to determine the demographic characteristics of the county as between Black and White?

A No, sir, we surely didn't.

Q Did you ever compare the final outcome of the plan that you proposed as regards Jefferson County? Did you go to the trouble of checking the demographic characteristics in trying to determine it was doing to the Black population by coming up with the plan that was suggested and adopted by the Board?

A No, sir.

Q Apparently, both yourself and your staff and the Legislative Redistricting Board, as a Board, or individual members of the Board, the existence of these minority groups in Texas were of little or no relevance; is that about right, in summing it up?

A No, sir, I don't think that. I think what we were interested in was population, the numbers.

Q They were interested in not coming up with too big deviations that might go against the one man, one vote rule?

A I think that they were concerned with drawing a

constitutional bill.

Q Yes, but to what extent did you consider the minority groups in drafting the plan?

A I didn't consider them top, side or bottom.

Q And you didn't receive any instructions from the Board to do that, either, did you?

A No, sir.

Q I think that's all.

MR. EDAR: I pass the witness.

CROSS EXAMINATION

Questions by Mr. Nelkin:

Q Mr. Johnson, my name is Stuart Nelkin, of Houston, and I am concerned with the Senate Redistricting. Now, could you tell us what your particular role was in that function?

A Just generally, you know, they gave us the map and said, "Draw it," and that's it.

Q Okay.

A And then draw the bill, or whatever you call the instrument, to comply, and proof it, and that's about it.

Q Okay. Were you given any specific instructions with regard to drawing of the Senate lines?

A No. If I recall correctly, the -- I am not trying

avoid this, but there again, Mr. Potter worked more closely with it than I did, and he could probably tell you more, but I think what we received was a map, and we put this in bill form, or whatever the bill is, whatever you call it, resolution the Board adopted.

Q All right. And that map would have had all of the Senatorial Districts drawn on it?

A Yes, sir.

Q And is that the map that ultimately became law, as you know it?

A Yes, sir.

Q And so, then, actually, as opposed to the House Redistricting, where you were concerned with numbers and getting the district drawn, with this particular map, it was already drawn for you?

A If I recall correctly, yes, sir, it was, and I -- I think it was, yes, sir.

Q All right. And did you make any changes in it at all, or simply put it in bill form?

A Let me back up again. I think that they came up and said they were going to cut Harris County, you know, and going to cut -- I do recall Tarrant County. They were concerned about drawing the line across the county.

Q Hmm, when you say "they," who are you speaking of?
A Mr. Potter was concerned about it, and he conferred with several people, and I don't know who it was, about where to draw the line, and it may have happened, also, with -- I don't -- I just don't know. I do recall Tarrant County, and that's the only one I do recall.
Q But as far as Harris County, your best recollection is that it was already prepared for you, and you simply firmed it up into a bill?
A That is right.
Q Do you know who drew the map?
A No. I think -- Loyd, I can't even think of his name now.
Q Would it be Barnes?
A No; Mr. Spellings, I think, or some people, probably, in his office probably drew it.
Q All right. Did you check it as far as its mathematical accuracy, or did you not even do that?
A No, sir, we did try and check the mathematical accuracy, and there may have been some changes as a result of that. I don't know.
Q Did you have an occasion to consider Harris County Districts, or any other districts -- Senate now -- with regard to the voting strength of minorities?

A No, sir, I did not.

Q Did you have presented to you any other Senate plans that you could compare with the plan that was sent to you, or did you know when you got that plan, that was the plan, and that was it?

A That's about it.

Q That's it?

A We did, of course, have plans in the file that were submitted by, I think, at the various hearings they had, I think, Mr. Graves submitted a plan for Harris County. I think Mr. Blythe submitted a plan. I knew Senator Henry was going to submit a Statewide plan, but I don't recall whether we ever got that or not from Senator Henry.

MR. HILKEN: For the record, I would like to indicate that this is a document that I found in one of the three files, Mr. McDaniel, that you presented to the Plaintiffs this morning.

Q Mr. Johnson, could you-- have you ever seen this document before?

A To tell you the truth, I don't have any independent recollection of having seen it. It may have been ---

Q Would you simply read the title of that into the record?

A "Proposed State Senate Districts, Harris County and

Q And if you will look at the map and simply indicate who it has been prepared by.

A It says "Census Tracts of Harris County, Texas, Prepared by Research Department of Houston Chamber of Commerce and Houston City Planning Commission."

Q And it is an orange folder; right?

A Yes, burnt orange.

Q Which contains -- let's see -- the first page, called Senatorial Districts; a map which you read off of, and then a page called "Justification," and then one called "Core District, South District, Southeast District," two pages, and "Northeast District," two pages, and "West District," two pages?

A Yes, sir.

Q Now, when you were --

MR. McDANIEL: I presume you want that copied?

MR. HILKIN: Yes. Let's put it over here with the other stuff.

Q When you were drawing your lines, either Senate or House, was one of the considerations -- you had at least an amorphous idea that you ought to take into account that of incumbent districts, districts represented at the time by incumbents?

A No, sir. When I did it?

Q Yes, sir.

A No, sir.

Q So, as I understand it, with regard to the House you were concerned with numbers, and with regard to the Senate, you really didn't have any concern; it was already drawn for you?

A Well, except where we were cutting up counties, like Tarrant County, to keep the population as equal as possible.

Q All right. Now, did you have an occasion to review the testimony taken before the Legislative Redistricting Board with regard to the Senate apportionment?

A Did I review it? I was there and heard it all.

Q And did you hear, Mr. Johnson, that a majority of the discussion on the Senate revolved around representation of Blacks in Harris County?

A Yes, sir, I think that was the gist of Mr. Graves' testimony, and I think Mr. Blythe also.

Q And did you have an occasion when you saw the map to examine the map for that type of inquiry?

A When I saw the Harris County?

Q That that was presented to you for Senate Districts; you have heard all of the testimony about Black representation and Black voting; did you have an occasion to look at the map for that purpose?

A No, sir, I did not.

Q Are you familiar, as you have indicated you are with all of the other cities, with Houston regarding pockets of Black personnel in Houston?

A I only know that I have heard it. I am not familiar with it. I have heard Sixth Ward.

Q Fifth Ward?

A Fifth Ward, or something like that.

Q Third Ward?

A I don't know the physical location of them, no, sir.

Q Is Mr. Potter your subordinate?

A He is the Assistant Director of the Council, yes.

Q But, in fact, he really appeared, with regard to the Senate, to be doing more negotiations with the Board?

A He did -- let me put it this way: He did most of the work during the session, and he knows much more about the physical lines and how to draw the physical lines than I do in working with the metropolitan maps, et cetera.

Q Did you have an occasion to have presented to you a Senate Plan drawn by a Senate Apportionment Committee of the Senate, of the State Senate?

A During the session?

Q They drew it during the session. It was not passed, but there was a plan?

A I don't recall that. I recall they passed several resolutions.

Q All right. That -- I think that Senator McKool had one that was signed by Dallas people, and one from Harris County signed by those people in the batch, and Bexar County, and I think one -- during our preparations we did draw these off and did have them in a file for the individual members of the Board.

Q What source material do you know of that either your staff or Lieutenant-Governor Barnes' staff, or actually the Counsel themselves, used? We know they had census tracts. Did they have the old lines? Was that another source of ---

A The old maps were available, yes, sir.

Q All right.

A I am sure they did have them.

Q Did they have any election results of past elections?

A Not from our staff, they did not, no, sir.

Q All right. Do you know if any of the staffs used that as a factor?

A I have no knowledge of it. They may very well have done that, but I don't know.

Q Was one of the considerations that went into the drawing of the House lines that of highways?

A In some areas where you start cutting up a county -- I

know that in Odessa -- not Odessa -- yes, Odessa -- Ector County -- that is correct; they tried to keep, you know, the City, and there is a district and a half, or a part out there, they tried to keep the City together and let the rural people be attached to rural areas.

Q All right. What are the factors, based on your experience, what are the factors that are considered desirable in drawing district lines, besides numbers?

A Oh, I think if you could have lines of demarcation, as you mentioned, where people on one side will know they are in one district, and the people on the other side would know they are in the other district.

Q What about compactness in a district; is that considered a factor?

A I think it could be considered to an extent.

Q What about community of interests of people in the district?

A I think that, to the extent you can within that numerical nicety that you are trying to consider, that you should consider that.

Q So that if there are several ways to draw a district, all of which had the same numerical deviation, if you could take into account these factors and one plan did, and one plan didn't, you should opt for the

one that did?

A Yes, I think so, if you are in a position to do that, yes, sir.

Q Would you say, sir, -- let me have this marked.

(Said instrument was marked for identification as Plaintiffs' Exhibit No. 2.

Q Mr. Johnson, taking a look at what has been marked as Plaintiffs' Exhibit 2 for identification, which is a newspaper clipping from the Houston Post, October 16, 1971, Page 8-A, and which purports to be a diagram of the Senate Districts as promulgated by the Committee, if this is a correct representation, would you comment as to the compactness consideration of, for instance, District 13?

A It is bigger than the other districts, and it is -- Oh, I think, as you say, that it is a question of comparison. When compared to a district that runs from San Antonio to Eator County, it is not big at all.

Q But considering the other districts?

A Yes, sir, it is larger than the other districts; there is no doubt about that.

Q All right. And would you say there is any rational basis for making a district that way?

A Yes, sir, I think it is on the basis of population.

Q All right. But again, dealing with our plastic model, if there are many ways to draw a district which would be numerically comparable, would it be an undesirable district as presently drawn?

A There again, I hesitate to say, because I don't know. As you point out, things like community of interests and these other things, I am not familiar enough with the county to say, so taking all of it into consideration, if compactness is the only thing you consider, it is not compact, and you probably could draw it more compact if you don't take into consideration these other things.

Q All right. And if I were to represent to you that in District 15 that you see indicated there, that there is a combination of silk stocking voters in River Oaks and Black minority group members, would you say that that would fail, as far as community of interests?

A I would certainly think so, yes, sir.

Q I have nothing else.

CROSS EXAMINATION

Questions by Mr. Mason:

Q Mr. Johnson, I am Nathan Mason from San Antonio,--I believe you know me -- and I represent Van Archer, et al. Mr. Archer is the Republican Chairman of Bexar

County. And, of course, I don't want to be repetitious in these questions, but I would like to point out and ask a few questions concerning the Legislative Redistricting there, and specifically the Senatorial Redistricting. Now, in order to -- I believe you testified, Mr. Johnson, that, by and large, the Senatorial Redistricting Plan and Map was given to you and was approved, almost no changes made, and given back to the Board; is that correct?

A Yes, sir, if I recall correctly.

Q Now, then, your group did not consider, then, the various minorities, whether they be ethnic, racial or political, in regard to the -- specifically the Senatorial Redistricting; is that correct?

A That is correct.

Q Are you familiar with District 21, Senatorial?

A If you can show me the map. I may not be by number.

Q (Handing map to the witness.)

A Yes, sir, I recall that.

Q I believe you previously testified that you had some knowledge concerning the metropolitan areas of Texas. Are you familiar with -- you mentioned something about the west side awhile ago. Are you familiar with the north side of Bexar County or the northeast side of San Antonio?

A Just that I have been around the Loop.

Q You go in that way on the highway, don't you?

A Yes, sir.

Q Well, for your information, the northeast part of San Antonio has a Republican justice of the peace and a Republican county commissioner.

A Is that Bob Strickland?

Q Yes. I am sure you know Mr. Strickland from previous days in the Legislature. He is now a Republican. Bearing in mind the common interests which should be followed, and, of course, the tract is contiguous by going around Districts 19 and 26, do you have an opinion on the compactness of District 21? It takes in Zapata, Starr, Jim Hogg, Duval, Webb, and swings around 19 and 26, and takes in the north part of Bexar County and the northeast part of San Antonio. Do you have an opinion concerning the compactness of this?

A No, sir ---compared to what? There is no doubt but what it could have been made more compact.

Q But again, you did accept the plan as submitted to you by the Board?

A You bet.

Q Was this your direction -- I mean, simply to -- were you directed or instructed to make any changes in that,

or what instructions, if any, were you given?

A If I recall correctly, just put it in the bill form and draw the accompanying maps with it.

Q In other words, yours was strictly a mechanical or procedural thing, and you were to perform no changes or even opinions concerning it; is that correct?

A No, sir.

Q "No, sir," you were not?

A That is correct.

Q And you were not to weigh the ethnic, political or racial factors, or anything of that nature?

A No, sir.

Q You previously stated, I believe, that you did not weigh -- strike that. You did take into consideration, I think, ethnic and racial situations in regard to the legislative redistricting where they were apparent to you. I am not talking about Bexar County; I am talking about in the State as a whole; is this correct?

A No, sir, I don't think so.

Q You did not take that into consideration?

A No, sir.

Q And, also, would it be fair to say you did not take into consideration any political aspects, whether it be Republican or Democrat, or anything like that?

A That is correct. That is a correct statement.
Q Do you have in your office any other Senatorial Redistricting Plans or Maps other than the one that was formulated here and passed by the Redistricting Board?
A I am sure we do, yes, sir.
Q Are those -- they are under your jurisdiction and control?
A Yes, sir.
Q Would they be open for our inspection, if we want to see them?
A Anything we have, yes, sir.
Q And we can come by your office and examine those?
A Yes, sir.
Q Were you approached by any members of the State Senate from Bexar County concerning the redistricting of -- Oh, 19, 26 or 21?
A I believe I talked to Senator Bernal once or twice about it before we had had any plans, and all. I was approached to that extent.
Q How about Senator Kothmann?
A I may have talked to Glenn, Senator Kothmann, one time, but I think, there again, it was before we got any plans on the, on any maps on the thing.
Q How about Senator Connally?

A I am quite sure I haven't talked to Senator Connally at all about it.

Q Senator Connally is probably not going to run again for the Senate?

A That's what I understand, yes, sir.

Q Do you know whether or not you have any correspondence in your files, either from Senators Bernal, Kothmann or Connally, or their constituents, concerning the redistricting of 19, 21 and 26?

A I think there are some letters from Senator Bernal, and perhaps Senator Kothmann.

Q And those, too, are in your office?

A Yes, sir.

Q As far as you know?

A Yes, sir.

Q And would be open to inspection of the various persons here?

A Yes, sir.

Q I am going to hand you a letter here -- I haven't even read it yet -- directed to the Legislative Redistricting Board, signed by Senator Bernal, and ask you whether or not you have seen it?

A I think this is the statement that Senator Kothmann made to the Redistricting Board and filed with us, and probably sent me a copy.

MR. EASON: Could we have this marked for identification, please, sir?

(Said instrument was marked for identification as Exhibit P-2A-1.

Q (By Mr. Eason) For the record, this is a letter written to the Legislative Redistricting Board of Texas, addressed to each one of the individual members, on the Senate letterhead of Joe J. Bernal, District 26. It consists of -- it is dated August 24, 1971. It consists of three pages in the original letter, together with a reply, a map of Bexar County, a second map of Bexar County, a copy of a newspaper article by Reagan Diehl, from the San Antonio News, dated Thursday, June 3, 1971, another map marked Exhibit "B," showing Mr. Bernal's and Mr. Nathanson's districts in Bexar County, another page marked Exhibit "E," on the letterhead of the Attorney General of Texas, dated June 4, 1971, containing one, two, three, four pages, signed Crawford C. Martin, Attorney General, with an addendum thereto showing approval of the Opinion Committee, and another page, Exhibit "F," showing a resolution for Senatorial District 19.

MR. LUNA: Let me ask you a question. Are you just marking that?

MR. EASON: Just marking it for identification.

and not offering it.

MR. EDAR: You will want it attached to the deposition, won't you?

MR. EASON: Well, I haven't even finished reading it. I believe that's all of the questions I have at this time.

CROSS EXAMINATION

Questions by Mr. Greenberg:

Q Mr. Johnson, I am Robert Greenberg, and I represent the Plaintiffs in the Marriott case, and I have a few questions. Could you tell us from the inception of the Legislative Redistricting Board until the adoption of the House Plan approximately how many meetings that you had with Mr. Spellings of Lieutenant-Governor Barnes' Office, with respect to either the House or the Senate Plans?

A I would say fifteen or twenty. That is a ball park figure.

Q Now, Mr. Johnson, were these meetings with Mr. Spellings necessitated because of administrative needs in exchanging information to draw districts, or were you and Mr. Spellings making judgment decisions as to what was going to be drawn?

A Well, whether or not-- you know, they would call us

and say, "Draw up some plans," you know. Just as a point of departure, I guess we would be making judgment decisions, those that we would put together and wouldn't put together, or counties, but most of it was administrative, what have they decided, and what are they going to do with this, and how do you cut this up, and this, that and the other.

Q Did you meet with Commissioner Armstrong?

A Bob was in the office -- Commissioner Armstrong was in the office two or three times, and I talked to him on the phone several times, yes, sir.

Q Now, Mr. Johnson, during the meetings with, let's say, for instance, Commissioner Armstrong, did Commissioner Armstrong tell you in any of those meetings or on the phone, "We came and drew a certain district this way, or that way"? Was this the nature of those conversations, or was it more general, or what was it?

A Very general. I don't think he at any time told us to draw any lines any place, or told us to draw any lines any place. He may have discussed it with somebody else on the staff -- Mr. Foster.

Q Now, would this also be true as to the other members of the Board that you talked to individually?

A Yes, sir.

Q None of them told you to specifically draw a Senate

line or a Senate District in a certain manner, or a House District in a certain manner?

A They never told me to do that. There again, they may have talked to Mr. Potter.

Q Did you conceive your job as Director of the Legislative Council to be one of administration and a map-drawer?

A Yes, sir.

Q And was it your agency that was given the primary function of checking out population figures within certain lines that were drawn in a computer against a particular deviation?

A I don't know if -- I don't believe -- we didn't have any deviations set. We would check the populations.

Q Did you do that by computer?

A Yes, both ways, by hand, and also by the MSHR computer.

Q Now, with respect, Mr. Johnson, to your service prior to become head of the Legislative Council, you were an elected State Representative from Dallas County, were you not?

A That is correct.

Q How many years?

A Four terms.

Q During those four terms as an elected Representative

in Dallas County, did you run at large, or a single-member district, or how did you run?

A At large in Dallas County.

Q During the time that you were a member of the House from Dallas County, were there any other members of any minority groups in that delegation?

A No racial minority groups or political minority group. In fact, at that time, they were a political majority group from Dallas County, Republican Representatives from Dallas County.

Q Have you kept up particularly since you were a former legislator from Dallas County or Dallas County per se, as opposed to your present county where you live now, Travis County?

A No. Of course, I know more about Travis County than I do about Dallas, because of the tremendous growth of Dallas.

Q All right. Now, you have been asked questions here today about district lines, both the House and Senate, with regard to Bexar County, Dallas County and Harris County, El Paso and Tarrant Counties. I don't think you have been asked any questions with regard to Travis County, but if I were to ask you those same questions, would I get the same answers as they reflect to Travis County, with the exception that you

had no single-member district plan in the House presented to you? Did you have particular State Senators, or some State Senator from Travis County that submitted a plan for the Senate District here?

A No, sir, I don't recall.

Q Did any of the House members from Travis County contact you with regard to districts in Travis County?

A No, sir, except to the extent that we received the statewide plans. I think Mr. Blythe, Representative Blythe, submitted one that was statewide with individual districts in all of the -- throughout the State.

Q Let me go back and try to understand something, Mr. Johnson. Did you conceive your duty as head of the Legislative Council in the work of the Legislative Redistricting Board to consider the guidelines that the Supreme Court laid down in the Chavez and other cases, or did you consider your duty strictly administrative, a scrivener's duty, and your concern with population?

MR. RICHARDS: I would object. I don't believe an administrator and a scrivener are quite the same thing.

MR. GREENBERG: Well, you can ask your

questions the way you want them, and I will ask mine the way I want, unless you don't understand the question, Mr. Johnson.

A I think I understand the question. I conceive that we did what we were told to do, and that's what we tried to do, and that's about it.

Q Thank you.

MR. LUNA: I may have one or two, if the Plaintiffs are through. Are all of the Plaintiffs through?

MR. CUNNINGHAM: Well, we are going around the table.

MR. RICHARDS: Oh, I thought you were going to Defendants, and I thought before the Defendants started questioning, you might want to get all of the Plaintiffs out of the way. I would just as soon come in behind you.

MR. CUNNINGHAM: I will be in behind you, and you behind him.

MR. LUNA: You all go ahead.

MR. CUNNINGHAM: No, go ahead, and then I will be behind you, and David behind me.

CROSS EXAMINATION

Questions by Mr. Luna:

Q Mr. Johnson, my name is Earl Luna, and I represent Roy Orr, State Democratic Chairman, and Chairman of the State Democratic Executive Committee in this case, one of the Defendants. Are you familiar with areas such as Fredericksburg, New Braunfels and Seguin; do you know where those places are?

A Yes, sir.

Q Is there any particular type of population that comes to your mind in regard to those areas?

A German.

Q German. All right. Insofar as those areas are concerned, were you told to make any effort with respect to giving or taking away from the German people any of their representation?

A No, sir.

Q Back to Dallas County, where you served eight years as a member of the Legislature, is it -- or are you aware as to whether or not in Dallas County, where -- first, the members have always been elected at large in the House Plan, have they not?

A Yes, sir.

Q Are you aware that in the legislative process in Dallas County that we have elected more than once

Blocin to the Legislature?

A Yes, sir, I am familiar with that.

Q Have we also, and do we now have serving as a member of the Legislature a Czech?

A Yes, sir.

Q Do we have serving at least three or four Catholics?

A Yes, sir.

Q Do you know that we also have serving from Dallas County a Jew?

A Yes, sir.

Q Now, are those people that we have talked about, with the exception of one, on the House Delegation, elected on the Democratic ticket?

A Yes, sir.

Q Now, there is at this time one Republican serving as a member of the delegation, is there not?

A Yes, sir.

Q Mr. Johnson, in 1962, what were you doing?

A Practicing law in Dallas.

Q Were you in the Legislature in 1962?

A Yes, sir.

Q Who won the -- with respect to parties -- the legislative House seats in Dallas County in the 1962 election; do you recall?

A Yes, sir. There were six Republicans and three

Democrats.

Q Six Republicans and three Democrats?

A Yes, sir.

Q Now, right after -- a few years after the war, along in 1949 or 1950, was there also one Republican elected from Dallas County to the House of Representatives?

A Yes, sir, there was.

Q And then ---

MR. RICHARDS: I am sorry. Who was that?

Q (By Mr. Luna) Was it Ed Dicker?

A Ed Dicker.

Q Then, subsequent to those six that were elected in 1962, was there in a special election a Republican elected thereafter?

A To the Legislature?

Q To the Legislature; do you remember that?

A No.

Q Do you remember John Lowrance and Doug Bergman in a race?

A Yes, but that was when Judge Bob Hughes and I resigned the ---

Q Do you remember John Lowrance being elected first in a special election?

A He sure was. That's right.

Q And then later was defeated in a regular election?

A That's right.

Q Now, after -- now, we have come, insofar as you know, up through that point, from the days of the Civil War, there are the only Republicans that have been elected in Dallas County, are they not?

A I am not familiar from the days of the Civil War.

Q As long as you can remember?

A Well, with the exception of some of the local offices there.

Q We are talking about the Legislature now. At the present time, then, you have told us that Representative Agnich is serving as a member of the House of Representatives, having been elected on the Republican ticket; is that right?

A That's right.

Q Now, that is nine that we have counted up so far, members of the House, that have been elected, nine different people, at least since World War II; is that right?

A There were more than that.

Q On the Republican ticket?

A There were more than that. When Judge Hughes and I resigned, they had a special election to fill our places, and Republicans were elected there.

Q Republicans were elected there?

A Yes, sir. They didn't ever serve in any session of the Legislature, but they were elected.

Q So maybe as many as ten or eleven. Now, in politics, has it been your experience, particularly in Dallas County, that if a politician is indicted or charged with some serious crime, it has political overtones?

A Yes, sir, but let the record reflect I haven't been indicted.

Q Let's come to the nine to eleven members of the Republican Party. Are you aware that at least two of them have been charged with violations of the Criminal Laws?

A I recall one. I don't recall but one.

Q You don't recall but one. Now, on the other hand, since you have been in the Legislature, or since you have ceased to be in the Legislature as a member, have you continued to be generally familiar with politics in Dallas County?

A Generally, yes, sir.

Q Would it be fair to say that the Black population predominantly supports the Democratic ticket?

A Yes, sir.

Q And, although we have had over the period of years, as you pointed out, as many as perhaps eleven

Republicans elected to the Legislature, there has never been a Black elected on the Republican ticket, has there, to the Legislature?

A No, sir.

Q In North Dallas, are you familiar with that area generally?

A Yes, sir.

Q Would it be fair to say that perhaps the largest Jewish population is in North Dallas?

A Yes, sir, I think it is.

Q Now, based on your experience in politics, with the Legislative Council and knowledge of Dallas County, do you know of anybody in Dallas County who has ever been denied the right to register to vote?

A No, sir.

Q Do you know of anybody who has not had access to the political processes in any other way, including through voting?

A No, sir.

Q Mr. Johnson, insofar as you know, in the plan for the House of Representatives, the large plan in Dallas County, is there any invidious discrimination against any group, whether it be student group, ethnic, religious or otherwise?

A As far as I know?

Q Yes, sir.
A No, sir.
Q And you are more than fairly familiar with politics in Dallas County, aren't you?
A Yes, sir, I am pretty familiar with them.
Q Do you know of any member of the Legislature named Dick Reed?
A Yes, sir, I sure do.
Q Would it be fair to say that Dick Reed is, if we label Democrats as Liberal or Conservative, might fairly be regarded as a Liberal Democrat?
A Yes, sir.
Q Now, do we have others on that delegation that would be regarded as middle of the road Democrats?
A Yes, sir.
Q Some as Conservatives?
A You bet.
Q And even one as a Republican?
A I wouldn't say "even one" is a Republican. I said one.
Q One is a Republican?
A Yes.
Q There was more than one in 1962?
A Yes, sir.

MR. GREENBERG: Pass the witness.

MR. CUNNINGHAM: Mr. Johnson, when you say ---

MR. RICHARDS: Did you have any questions, then?

MR. SCHAEFER: No, sir.

CROSS EXAMINATION

Questions by Mr. Cunningham:

Q Mr. Johnson, when you served in the Legislature from 1955 to 1961 or '63, were there any Blacks on the ticket then?

A No, sir.

Q Were there any Blacks serving in the Legislature?

A No, sir.

Q Okay. I think you indicated that you are also familiar with politics from '49 up until '62 in Dallas County; is that right?

A Just generally.

Q Okay. Well, during that period of time were there any Blacks that served in the Legislature?

A I am sure there were not.

Q Do you know when the first Black was elected to the Legislature?

A '65 or '67, one of those two years.

Q Okay. And do you know whether or not there had been

any Blacks that had run or had made a legislative race prior to '65 on either the Democratic or Republican ticket?

A I do not recall any, no, sir.

Q You don't recall any?

A I don't think there were.

Q You are not sure whether or not there may have been one or not?

A Making a race?

Q Uh-huh.

A I don't recall any making a race, no, sir.

Q Okay. But you are not saying that there may not have been one?

A That is correct.

Q Okay. Do you know whether or not there have been any Blacks that have run on the Republican ticket?

A I know of one, I believe.

Q And do you know when that was?

A Either last year or two years ago. Mr. Kervin, I believe his name was.

Q Now, I believe when you ran for the Legislature in 1953 to 1963, that you were then quite -- you were familiar with the politics in Dallas County then, weren't you?

A Yes, sir.

Q You were familiar with the costs that a candidate incurred in running for the Legislature countywide?

A Yes, sir.

Q And it was at a considerable cost, wasn't it, Mr. Johnson?

A Depending upon the race, yes, sir.

Q And if you were not a member of a ticket, whether it was nine, eleven or fifteen members, you did not stand a chance of being elected; isn't that true, Mr. Johnson?

A I was elected, and I wasn't a member of a ticket.

Q You were an exception?

A Yes, sir.

Q Okay. And you were one of the few exceptions that have been elected in the State Legislature, if they were not on the Democratic ticket; isn't that true?

A Yes, sir.

Q Okay. Bob, I believe Mr. Potter is a subordinate of yours; isn't that true?

A Yes, sir.

Q And that he is responsible to you to whatever his acts are with respect to the Legislative Council; isn't that correct, sir?

A That's right.

Q Okay. And he works under your direct supervision?

A No; we work together.

Q Well, you are his boss?

A Well, yes, sir, that's right.

Q Okay. And he is also responsible to the Texas Redistricting Board?

A Yes, sir.

Q Through you?

A Yes, sir.

Q Okay. So that whatever Mr. Potter did, he was doing under your direct supervision and that of the Texas Redistricting Board?

A Right.

Q All right, sir. Okay. Now, you made a statement that no Board action, as a Board, gave you instructions what counties should be multi-member; is that true, sir?

A Yes, except to the extent they sent us the map, or gave Mr. Potter the map of Harris County, and that was it.

Q Well, am I to understand that what actually happened is, you drew the other counties except for the metropolitan areas; is that correct, sir?

A Yes. What you do is, you draw the others, and you assign to many, starting out with Harris 23, and then Dallas 19, and then determine which way they are going

to go. Do you see what I mean?

Q Yes.

A You see, I assign them to the county, and if they say cut them up, we will cut them up, and if they don't, we don't.

Q You assigned 18 to Dallas, and you assigned so many to Harris County, and a Board member -- one of the Texas Redistricting Board members sent you a plan for Harris County, and said, "This is Harris County"?

A Yes, sir.

Q And because you did not receive a plan telling you that Tarrant County or Dallas County or Bexar County or El Paso County should be cut in a certain district, you didn't do anything?

A That's right.

Q And that when you brought it up here to General Martin, you had already submitted it to two other Board members; is that correct, sir?

A No, sir, I did not submit it to any of them.

Q Was General Martin the first person that you submitted the plan to?

A No, sir. I don't specifically recall submitting it to General Martin. I think I sent it over here, or something like that.

Q Do you know who you sent it over with, sir?

A No, sir, I don't.

Q Well, ---

A It could have been Mr. McDaniel or Mr. Walker, or any number.

Q Well, was General Martin the first person that you showed the plan to in its final stages or final design?

MR. CURRY: On the Board?

MR. CUNNINGHAM: Yes, of the Texas Redistricting Board.

A I honestly don't know, sir. There again, if you talked to Mr. Potter, he may have some independent recollection.

Q Did you or any member of your staff ever draw a single-member district for Dallas County, Texas?

A No, sir.

Q Did you ever consider drawing a single-member district for Dallas County, Texas?

A Yes, sir.

Q Okay. When?

A All during the proceedings.

Q I am talking about right -- I am not concerned now with the session. I am talking about the five meetings that were held by the Texas Redistricting Board.

A You mean did we ever have a specific plan or direction

or idea to draw one?

Q Right. For Dallas County, Texas.

A No, sir. When I said we considered it, we considered the possibility and how much work had to go into it to draw it, and that's it.

Q Okay. Now, with respect to Bexar County, did you ever consider a single-member district for Bexar County?

A No, sir.

Q Did you ever consider a single-member district for Tarrant County?

A No, sir.

Q Did you ever consider a single-member district for El Paso County?

A No, sir.

Q Or any of the large metropolitan counties, other than Harris County?

A No, sir.

Q You mentioned that there was a publication out that could reflect the breakdown of Whites and Blacks in each of the major metropolitan centers. What is that publication?

A It is one of the Census Bureau publications. It has a number and name, and I don't have it. We have them at the office, and I will be glad to get that information for you.

MR. RICHARDS: Could we stop by there today or tomorrow, and could we pick up a copy of it, or make a photocopy?

A If you will give me your name and address, I will be glad to send you all a copy.

MR. RICHARDS: Well, we will be here tomorrow, and if you will make photocopies, we will be glad to stop by and pick them up.

A I will drop them over to you, if you will tell me how many you want.

MR. RICHARDS: How many do we want?

(Thereupon, a discussion was had off the record, after which the proceedings were resumed as follows:

MR. McDANIEL: Make twenty, and that's enough for everybody that's here.

Q (By Mr. Cunningham) Mr. Johnson, with respect to the Blacks in Dallas County, do you know where the majority of the Blacks are located?

A Yes, sir, I think.

Q Well, where are they located?

A South Dallas.

Q South Oak Cliff?

A Yes, sir, South Oak Cliff and West Dallas.

Q And West Dallas in what is now known as Singing Hills?

A Yes, sir.

Q Singing Hills off of Ledbetter and off up in there?

A And Lancaster.

Q Do you know what the approximate population of Blacks in Dallas County is now?

A No, sir.

Q Okay. You don't have any idea?

A No, sir, I don't.

Q That's all.

REDIRECT EXAMINATION

Questions by Mr. Richards:

Q I will try not to be repetitious, Mr. Johnson, because I missed a portion of your earlier deposition. How long have you been down here now with the Legislative Council?

A Since September, 1963.

Q Since '63. Did you -- I guess you played a comparable role in the 1963 Legislative Redistricting?

A I took a much greater part then than I did this time.

Q A much greater part. I have seen figures that were on the number of Blacks who have served in the Texas Legislature I think that were produced during the course of the litigation that followed the '65 Redistricting. Was that information available through your Service? Do you know?

A We may have gotten it together, Mr. Richards. I don't know, but we could probably get it to you if you need it.

Q And without plowing the ground that has been plowed, if I can avoid it, I take it your testimony has been that at least your role in the decision to treat the metropolitan areas as countywide is summarized by saying that you received no instructions one way or the other from any member of the Redistricting Board as regards the treatment of Dallas, Tarrant and Bexar Counties; is that correct?

A That is correct.

Q Did you ever receive a request to draw a plan from any member of the Board, to draw Dallas County into something between individual districts and countywide, as you recall?

A Dave, there may have been. I recall that Branton -- there was something in the newspaper that Branton and Mutscher discussed it, and we may have done something for Mr. Mutscher along that line, but, as I say, I don't have any independent recollection. I can sure check and find out by talking to Mr. Potter.

Q At least, you have no recollection of receiving such a request from Lieutenant-Governor Barnes or any member of his staff?

A That is correct.

Q If any such request was made, it would have been only, so far as you recall it, at the request of Speaker Gatcher?

A That is correct.

Q And I take it from what I heard as I came in that in formulating plans for legislative districts, you received no instructions to attempt to verify that the plans did not discriminate against racial minorities; is that correct?

A No, sir -- yes, sir, that is correct.

Q That is correct. You say, Bob, when you initially ran for the Legislature, you were not on what is called the dominoe ticket; is that correct?

A That is correct.

Q Were you later included on the ticket?

A I think they did. They couldn't beat me, so they joined me.

Q Do you recall the last contested Democratic Primary race you made in Dallas County?

A Yes, sir.

Q When would that have been?

A In 1960.

Q 1960. Who was your opponent?

A I think Carroll Jernigan.

Q Do you have any idea what that legislative race cost in terms of either your own expenditures or expenditures of others on your behalf?

A No. I can just recall that my first race I think I spent $800.00, and my second race, I think I spent twenty-two hundred, and I don't think I had an opponent that third time. That's about all I can recall.

Q The Dallas County legislative contingent, at least in recent years, has been -- and by that I guess the last three legislative sessions, -- has been dominated, has it not, essentially by what go under the name of Conservative Democrats?

A Yes, sir.

Q And are you aware that there has come to be in Dallas in recent years a Conservative Democratic slate that is -- runs as such in the Democratic Primary?

A I know that from the paper and what not, Dave. I think that's true.

Q When was the first Republican Primary, if you recall, held in Dallas County?

A Lord, I don't know. They used to nominate by convention or by appointment or something. I don't recall.

Q You are aware, I take it, that -- strike that. That's all right. Mr. Luna has sort of made you an expert. I want to try one on you, quoting from Bo Byers of

Houston. Do you know Mr. Byers of the Houston Chronicle?

A Yes, sir, I do know Mr.

Q Mr. Byers in an article on October 10, 1971, of this year, stated in a column in the Houston Chronicle, referring to Dallas, Bexar and Tarrant Counties, "Conservative Democrats have dominated election of State Representatives in these three big city counties. Single-member districts undoubtedly would lead to election of more Liberal Democrats, Republicans, Blacks and Mexican-Americans in these counties." That's the end of the quotation. Would you agree with that, at least as regards Dallas County?

A I think I would agree with him, yes, sir.

Q What about with respect to Tarrant and Bexar, if you know?

A I am not so familiar with it, but I think it is probably a true statement there, too.

Q That's all I have. Thank you.

MR. LUNA: I have a few questions for you, Mr. Johnson.

MR. HILKEN: I want to ask a few questions.

RECROSS EXAMINATION

Questions by Mr. Nelkin:

Q When you received the Senate plan, were you given any indication that that was a unanimous decision of the Board or anything of the sort, or was it simply presented to you and you were told to perform it?

A I think that -- no, I don't think -- they said, "We have three votes, and let's go," or something of that nature.

Q Did you hear from the other two members of the Council with regard to their objections, of the Board?

A No, sir, I don't think -- that they came in to me and said, "Draw a different plan," or something like that?

Q Did any of the members of their staff or anything call you and say, "We have got some serious objections," or anything of that sort?

A No, sir, I don't think so.

Q So, actually, until the time that you presented the bill and the people were all sworn, and the two refused to sign it, you didn't really know that there were two objections?

A No. In fact, I was surprised. I think I presented it to Commissioner Armstrong first, and he didn't sign it, and then -- so I didn't know who was voting for what, and when.

Q You were simply told, 'We have got three votes, and let's go with it'?

A Yes, sir.

Q Did Commissioner Armstrong tell you why he wouldn't sign it?

A No, sir, I don't think so.

Q I have no further questions.

RECROSS EXAMINATION

Questions by Mr. Jones:

Q You talked earlier in answer to a question about Conservatives running, candidates running as Conservative Democrats, Mr. Johnson. Now, what ticket do they run on? What party ticket in the primary? What party primary are they running in?

A Democratic.

Q So there is no Conservative Democratic Primary; it is the Democratic Primary?

A Yes, sir, that's right.

Q Now, -- and we have elected from time to time people of all political beliefs, all religions and all colors, have we not, on the Democratic ticket, or nominated them?

A Not all.

Q At least of those that you have mentioned today, of

those races and colors that you have mentioned today, Greeks, Blacks, Whites, Catholics, Jewish?

A Yes, sir.

Q On your -- your single-member district, if Dallas is divided up into single-member districts, wouldn't it depend as to how many Blacks, for instance, would elected, would it depend on how the single-member districts would be cut up?

A Oh, yes, sir.

Q And wouldn't it also depend on how attractive the individual candidate was that was running, what kind of public acceptance he had?

A I think that's true. I don't know to what extent you have block voting or -- you take that into consideration, too.

Q They mentioned something called "the downtown ticket." Actually, the members of the Legislature elected in Dallas County live all over the County, do they not, including Hutchins, Irving, Carrollton, and other areas?

A Yes, sir, Oak Cliff.

Q So, the support is countywide, and not just downtown; is that right?

A They are elected from all over the county, yes, sir. Their homes are.

Q That's all of the questions.

RECROSS EXAMINATION

Questions by Mr. Idar:

Q Let me ask you just one question. Have you ever elected a Mexican-American from Dallas County?

A I was trying to think. I don't think so, no, sir.

Q I think I had better -- I would like to have the record clear on this, and I don't mean to be offensive, but Luna is a Spanish name; however, Mr. Luna doesn't claim to be a Mexican-American, does he?

A Mr. Luna, I think, is a maverick.

Q We have referred here to the Greeks, the Jews, the Catholics, and the Germans, but, in your opinion, do the Greeks, the Catholics, the Jews or the Germans in Texas face the type of social, economic, educational and other problems that are faced by the Mexican-Americans or the Blacks?

A No, sir, I don't think they do.

Q Do you know of any ghettos or any barriers for both the Germans, Catholics, Jews or Greeks?

A No, sir.

Q That's all.

RECROSS EXAMINATION

Questions by Mr. Cunningham:

Q Mr. Johnson, just one other question. If Dallas County was cut up into eighteen single-member districts without gerrymandering, taking into consideration where everybody lived, is it your opinion that more than one Black would be elected?

A Oh, yes, sir.

Q And do you have any idea how many Blacks would be elected?

A No, sir, I don't.

Q But it would be more than one?

A Oh, I think so. I would say three to five, maybe, something like that.

Q And also isn't it true that there would possibly be from West Dallas one Mexican-American, where they are predominantly located?

A Yes, sir; you go on into Akard Street there.

Q Thank you, sir.

_____

Robert E. Johnson

SUBSCRIBED AND SWORN TO BEFORE ME on this the _____ day of _____, 1972.

_____

Notary Public in and for Travis County, Texas

REPORTER'S CERTIFICATE

THE STATE OF TEXAS }
COUNTY OF TRAVIS }

I, Harry L. Hear, a Notary Public duly commissioned and qualified in and for the County of Travis and State of Texas, do hereby certify that, pursuant to notice, there came before me on the 27th day of December, 1971, at the Supreme Court Building of the State of Texas, in the City of Austin, Travis County, Texas, the following named person, to-wit, ROBERT E. JOHNSON, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath, and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness; and that the said deposition was thereafter to be submitted to the said witness to be by him carefully read over and subscribed and sworn to before any Notary Public, and thereafter returned into Court.

I further certify that I am neither attorney or counsel for, or related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or

REPORTER'S CERTIFICATE - (Cont'd)

financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, this ____ day of _____, 1972.

Barry L. Wear,
Notary Public in and for
Travis County, T e x a s

My commission expires June 1, 1973.

Mr. McDaniel's Copy "Calvert" 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL,
Plaintiffs,

VS. NO. A-71-CA-142

BEN BARNES, ET AL,
Defendants.

DIANA REGESTER, ET AL,
Plaintiffs,

VS. NO. A-71-CA-143

BOB BULLOCK, ET AL,
Defendants.

JOHNNY MARRIOTT, ET AL,
Plaintiffs,

VS. NO. A-71-CA-144

PRESTON SMITH, ET AL,
Defendants.

VAN HENRY ARCHER, JR.,
Plaintiff,

VS. NO. A-71-CA-145

PRESTON SMITH, ET AL,
Defendants.

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APPEARANCES:

STUART NELKIN, Esquire, and
DAVID BERG, Esquire,
Appearing for Curtis Graves, et al;

DAVID R. RICHARDS, Esquire,
Appearing for Diana Regester, et al;

ROBERT M. GREENBERG, Esquire,
Appearing for Johnny Marriott, et al;

NICKEY McGUIRE, Esquire, and
NATHAN W. EASON, Esquire,
Appearing for Van Henry Archer, Jr.;

WALTER IRVIN, Esquire, and
CLEO STERLE, Esquire,
Appearing for Intervenors Washington, et al, in Tyler Case;

E. BRICE CUNNINGHAM, Esquire,
Appearing for Intervenors Conrad, et al;

ED IDAR, JR., Esquire,
Appearing for Intervenors in Tyler Case;

SAM McDANIEL, Esquire, and
AL CURRY, Esquire,
Appearing for Defendants;

EARL LUNA, Esquire,
Appearing for Defendant Orr.

* * * * * * * * * * * * * * * *

DEPOSITION upon oral examination, of the witness, ROBERT S. CALVERT, taken on behalf of the Plaintiffs, in the above entitled causes, wherein the above mentioned persons are the Plaintiffs, and the above mentioned persons are the Defendants, pending in the United States District Court, for the Western District of Texas, Austin Division, before JACK D. SYKES, a Notary Public in and for Travis County, Texas, on the 28th day of December, A.D. 1971, in the Supreme Court Building, Attorney General's Offices, Austin, Travis County, Texas, between the hours of 9:00 o'clock A.M. and 11:45 o'clock A.M., pursuant to the following agreement of counsel:

MR. RICHARDS: I don't know whether Sam wanted to treat it just by notice or whether you wanted it.

MR. McDANIEL: I have no objection to treating it as if it were taken by notice, and my only thinking is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And no way -- Do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be available in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving the witness' unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present the witness' testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness.

MR. McDANIEL: That is correct.

MR. LUNA: For the State Chairman, we do not waive our right to cross examine the witness at the trial, and in the event he should not be available at trial, we do not waive the use of this -- if he is available, but is not placed on the witness stand, we don't waive our right to cross examine him at the trial.

MR. RICHARDS: Well, let me be sure I understand. Suppose that the witness is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of trial?

MR. LUNA: I reserve the right to examine him in person.

MR. RICHARDS: Well, then, at least you are on notice from me that it is going to be my position that if you have questions to ask the witness, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are here pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as firsthand

testimony.

MR. LEMA: I understand.

MR. RICHARDS: All right. Sure.

MR. LEMA: I may ask him some questions today, but I am simply not waiving any of my rights by participating in his deposition that I don't automatically waive thereby.

MR. RICHARDS: Is there anybody else who has got a position, attorneys who are present who want to put any position of record in the case?

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ROBERT S. CALVERT, a witness of lawful age, being first duly sworn on the above causes, testified on his oath as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. EASON:

Q State your name, please, sir.

A My name is Robert S. Calvert.

Q What is your official position?

A Comptroller of Public Accounts, State of Texas.

Q Mr. Calvert, my name is Nathan Eason and I am an attorney from San Antonio and I represent Van Henry Archer and others in a suit to declare unconstitutional the Legislative and the Senate Redistricting bills adopted by the Redistricting Board. Now, you were a member of

the Legislative and Senate Redistricting Board of the State of Texas, is that right?

A Yes, sir.

Q And, along with you there were four other members of this Board, is that correct?

A Yes, sir.

Q They would be Crawford Martin, Ben Barnes, Gus Mutcher and Mr. Armstrong?

A That is right.

Q Now, this Board was created by the Legislature of the State of Texas, is this correct?

A I don't think so.

Q How was it created?

A I understand it was created in the Constitution some 20 years ago.

Q How long have you been Comptroller of the State of Texas?

A For 23 years.

Q And, before that time what did you do, please, sir?

A I was Chief Clerk to the Comptroller for four years and Financial Statistician for the Department for 17.

Q You might say, then, your entire career has been in political office, is this correct?

A Well --

Q Or as an employee?

A Hell, 40 years of it.
Q Yes, sir. Where are you from originally?
A Do you want me to go all the way back?
Q Yes, sir. Where were you born?
A I was born on a cotton farm in McLennan County.
Q And, when did you leave McLennan County?
A When I was quite small my family moved to Broomwood, and that was where I grew up. When I was grown I moved to Sweetwater, West Texas, and that is where I was living when I was appointed Financial Statisticism in the Department by the then Comptroller George Sheppard.
Q What year was that, please, sir?
A It was 1930.
Q And, you have from 1930 until the present time been in your present employ or as an employee of this office?
A That is right.
Q When was this Board appointed? Now, I am talking about the legislative and -- when was it brought into being?
A I don't really know, but I think it was written in the Constitution some 20 years ago.
Q Let me rephrase the question. When were you advised that this Board was to be enacted and you a member of it for the purpose of redistricting the House and the Senate?
A I think it was after the first trial of the House

Legislative Redistricting was declared unconstitutional.

Q We are talking about the Supreme Court of Texas Mandate?

A Yes, I believe it was.

Q And, this would have been about in September of this year, wouldn't it, if you recall?

A No, it would be before that.

Q How many meetings did the Board -- how many public meetings did the Board have in regards to the redistricting?

A I believe there were three.

Q There were three meetings?

A I believe that is right. The first one was on the 24th of August, wasn't it, of '71?

Q All right. Do you recall the other dates?

A No, I don't.

Q But they would have been subsequent to the 24th of August of 1971?

A Oh, yes.

Q These were public meetings?

A Yes.

Q Were there any private meetings held by members of the Board?

A No, sir.

Q At the time of the public meetings did you hear testimony from various individuals concerning their

ideas in regards to plans for redistricting?
A Yes, sir.
Q How long would the meetings last, roughly, as near as you can recall?
A Oh, three hours -- maybe not that long.
Q You did, of course, from time to time discuss this matter with the other members of the Board, didn't you?
A Yes.
Q Either personally or on the telephone?
A Yes.
Q Was there anyone in your office that was delegated to do procedural or mechanical or drafting work on this?
A No.
Q In other words, you were the sole representative from your office that worked on it?
A That is right.
Q State, if you know, any other people other than the members of the Board who actually worked on the drafting of the two new redistricting laws.
A Well, yes. The Attorney General had a staff working on it, several men. The Legislative Council was working on it; they were actually drawing the maps.
Q Who is the Legislative Council? Are you speaking of the Board -- what I was referring to as the Board?
A I don't know what you mean.

Q Are you speaking of Mr. Johnson's office?
A Yes. Isn't that the name of it, Legislative Council?
Q I don't really know, Mr. Calvert.
A I think that is what --
Q Are you speaking of Mr. Bob Johnson's office?
A That is right.
Q And, you say they were drawing maps and working on plans at the same time?
A Yes.
Q Now, when I say the two redistricting bills I am referring to the House and Senate.
A Yes.
Q How about Mr. Barnes' office, did he have any men working on this?
A I think he did, but I don't know who they were or where they were working. I never contacted them and they never contacted me.
Q State who in the Attorney General's office contacted you or you contacted in regards to this, other than Mr. Martin.
A Oh, there might have been one or two or them, but mostly it was General Martin.
Q And, you don't --
A I talked with him many times.
Q Sir?

A I spoke with General Martin a good many times.

Q Do you recall speaking to anyone else in his office about this?

A Well, I can't pinpoint it now, but I am sure there were some of them.

Q Do you recall speaking to Mr. Barnes about this?

A No, except at the meetings.

Q Do you recall speaking to anyone in Mr. Barnes' office about this?

A No.

Q Do you recall speaking to anyone in the Legislative Council or in Mr. Johnson's office about this?

A I was over there a number of times but mostly it was with Johnson.

Q And, you don't recall anyone else in that office with whom you discussed this?

A No.

Q Mr. Calvert, did you at any time prepare any plans, maps or suggestions in regard to the redistricting of either the House or the Senate?

A No.

Q You did sign both bills, is this correct?

A Yes.

Q Did you have any --

A Now, what do you mean "both bills"?

Q Excuse me?
A The Senate --
Q Unless I state otherwise all of my questions will be confined to the Senate and the House.
A That is right, I signed both of them.
Q Did you have any dissent, complaints, alternate plans or suggestions other than the bills as they were finally approved?
A In other words, did I propose any changes?
Q Right.
A Is that what you mean?
Q Right.
A No.
Q Or did you have any dissent concerning any of the counties or districts as proposed by those two bills, Senate and House?
A No.
Q Well, would it be fair to say that these were and are approved, of course, by you and your idea of the best possible bills that could have been drawn up by the Legislative and Senate Redistricting Board?
A Absolutely.
Q And, you feel they are fair and equitable to all races, colors, political parties and all of the voters of the State of Texas?

A I sure do.
Q State, if you know, who made the suggestion that Harris County be divided into single member districts.
A Of the Board you mean -- of the Board?
Q Yes, sir.
A Oh, I don't know. It was discussed pretty openly.
Q Well, can you recall the discussion and why Harris County was given some single member districts?
A I know why it was, I think.
Q Why?
A That is what the people down there wanted. And, we had committees that called on us and brought maps; I turned them over to the Legislative Council. Everything I heard from Harris County they wanted the single district, and vice versa in Dallas, everything I heard from Dallas they wanted the multiple district. We thought that was what the people wanted.
Q The people from these particular counties?
A Yes, predominantly.
Q Yes, sir. Now, you are talking about these people that appeared as witnesses at the public hearings of the Board?
A Not only. I had letters and I had telephone calls from both of the places urging me to do this. And, when we got into the meeting it came up, of course, and we were

assured by the Attorney General that it was legal. That is what we were trying to do, trying to arrive at a legal redistricting --

Q That would satisfy --

A I was assured it was legal. And, who was I trying to please? The people. That is who I was thinking about. The people wanted it this way, and I think we did.

Q Mr. Calvert, did you keep a memorandum? Do you still have the letters, the telegrams or any memorandum of the telephone calls that you got from the constituents of these various counties?

A Not on the telephone calls; I had hundreds of telephone calls. But, I have got the letters and the maps if somebody wants to spend about a week sorting them. And, from the two places, predominantly the ones that was talking about Dallas was the multiple district and the stuff that came from Houston wanted the other.

Q Are these records open and available to the members, the complainants and the attorneys, for inspection and copying?

A Sure, I can get them for you. Frankly, they are not in any order because I put them in the file just to get them off my desk. But, I have got them.

Q As near as you recall, Mr. Calvert, was there any dissent by any of the members of the Board in regards

to -- let's take the Harris County single member districts as opposed to the Dallas, Bexar, Tarrant and other large metropolitan areas who have multiple member districts.

A Was any members opposed to what?

Q To making Harris County into single member districts? Now, I am talking about members of your Board.

A Yes.

Q And --

A Dallas.

Q Dallas, Bexar, Tarrant and other large metropolitan areas into multiple member districts.

A I don't believe there was in anybody's mind -- I know in my own mind -- there was any question about the legality of it.

Q Were all of the members of the Board present at all Board meetings?

A No.

Q Who was absent, if you recall?

A Well, Ben Barnes was absent once that I remember of.

Q How about Mr. Hatcher, was he at all meetings?

A I believe he was except for one meeting when he was real late coming in; I was wondering if he was coming.

Q How about Mr. Armstrong?

A I think he was there at every one of them.

Q State if you know why the House Redistricting Bill was not signed by Mr. Hutcher.
A Well, I could only presume why he didn't sign it.
Q Why is that?
A I couldn't make a statement because I can't testify for him, but I think it was because of the situation that he was in and it didn't coincide with what he had proposed back when the House acted. I am sure that is the reason.
Q Yes, sir. He had an alternate plan?
A Yes, sir.
Q That he was in favor of?
A That is right.
Q Now, I also notice he didn't approve the Senatorial Redistricting; do you know why that was?
A No, I don't. That was in the other House. No, I don't know why.
Q I notice Mr. Armstrong approved the House Redistricting but not the Senatorial -- I believe that is correct. Do you know why that was?
A No, I don't know why. But I do remember that at one vote there was only three of us that voted, and on that one Bob Armstrong didn't vote and I wondered why. I mean, he didn't sign it -- he didn't sign the order and I wondered why but I didn't know why.

Q He didn't state why?
A No.
Q Nor did Speaker Mutcher state why he didn't sign either one?
A No. Like I said awhile ago, I can probably presume.
Q Yes.
A If I was in his position I wouldn't either.
Q Mr. Calvert, you are not a lawyer, are you?
A No.
Q Now, of course, General Martin is a lawyer, and am I correct in assuming that you and other members of the Board looked to the Attorney General for the legality, the constitutionality and the advice concerning whether or not these acts were lawful?
A I did; I looked to him for that. And, he assured us at one meeting -- the question had come up about the legality, and that was one thing the Board wanted -- to do it legally, and he assured us it was legal.
Q Yes, sir.
A That is in the testimony, I am sure.
Q Yes, sir. Mr. Armstrong is a lawyer, I believe.
A Is he? I don't know.
Q You don't know? Well, in any event he wasn't giving legal advice regarding the legality or the constitutionality of the acts?

A I never heard him say anything about it.
Q And, as far as you were personally concerned you were looking to General Martin for this advice?
A That is right.
Q Did General Martin from time to time furnish you and other members of the Board with constitutional decisions, law cases or anything of this regard, in order to indicate to you what was required by the Constitution of the United States and the State of Texas in order to make any reapportionment plans legal?
A Not to me.
Q He did not?
A No.
Q In other words, he simply by word of mouth, if this is correct, advised you that these plans if and when they were prepared were legal?
A That was at an open meeting.
Q But was this the way he would do it, is simply say, "Now, this is legal"?
A Yes.
Q Are you aware -- Do you know what it means to say that the districts should be contiguous and compact; was that ever brought up?
A I don't know in those words, but I get the general idea
Q Yes, sir. But, was it brought up at the meeting by

General Martin or others that the districts should be contiguous and compact?

A I don't think so.

Q Was it ever brought up by him that the Board should waive the racial, ethnic, political and other characteristics among the voters of a particular precinct?

A I don't think so. I think really -- I think they avoided that, bringing that up. Wouldn't that have been a form of gerrymandering? I think this Board tried to stay away from that entirely.

Q Let me ask you this, did you personally weigh any racial or ethnic situations in arriving at your decision to approve the Senate and the House redistricting plans?

A I tried to avoid the thing all the way through. Now, I listened to the speeches that were made before these open meetings, and some of them to me sure sounded like gerrymandering.

Q Yes, sir.

A But that was the speakers, not the Board.

Q Yes, sir. Well, let me ask you this, and I am just trying to get at what happened, Mr. Calvert, would it be a fair statement to say that General Martin would recommend these plans and state that in his opinion

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they were constitutional and legal, and based upon this and the witnesses from the -- or constituents from the various districts being in favor, as you stated before, would this have been the criteria that caused you to approve the plans?

A It would surely contribute to it.

Q Well, did you use any other reasoning behind your approval for the plans other than what I have stated?

A Other than my own desire to -- that it be right and that it please the people. I thought it should be like the people wanted it.

Q Yes, sir. And, when you say the people you mean, of course, the State of Texas and of the particular district or precinct?

A Yes, that is right.

Q Would it further be fair to say that you completely disregarded such things as ethnic or racial or political reasons in arriving at your decision?

A I think I did in arriving at my decision. I did not ignore all the things that we heard, but I tried to not let it influence me. Could I illustrate that a little?

Q Yes, sir.

A I am not going to call names, but one of the speakers had a district drawn out where he took an old district,

a big part of it, and then when he came close to town he narrowed it down and widened it out again. Hell, it would have resulted in about 87 percent colored. Now, that wasn't the Board, that was one of the speakers.

Q And, what was your reaction to this?

A My reaction to that was that that was a true case of trying to gerrymander the thing.

Q In other words, he was trying to help himself?

A Sure.

Q Or the members of his race, is that correct?

A That was my reaction to it.

Q Now, Mr. Calvert --

A I didn't resent him doing that. He had a right to do that, I guess, before that Board, but that was my reaction to it.

Q Yes, sir. Now, you were born and raised in Texas?

A Yes, sir.

Q And, of course, you have been in political office for many years, and as a result of this would you say that you are fairly familiar with the various jurisdictions in the State of Texas? By this I mean your metropolitan areas, Dallas, Harris County, Bexar County, Tarrant County, El Paso County and things of this nature?

A Yes. In matters pertaining to taxes, particularly.

Not political. Not politics, particularly, but in taxes and that sort of thing.

Q Well, you do campaign and run for office?

A Oh, yes.

Q Are you aware, for instance, in Dallas County that there is a fairly heavily concentrated Negro population?

A Not so much as Houston.

Q Well, possibly not. Frankly, Mr. Calvert, I don't know the percentages --

A Well, I don't either.

Q -- myself. But there has been a migration by all people, regardless of race, color or creed, to the metropolitan areas.

A Yes.

Q Now, were you interested or did you take into consideration the effect of your vote or your approval of these plans as to the result that it would have, we will say, on a Dallas County Negro?

A No.

Q You didn't even consider this?

A No, never gave it no thought.

Q Now, would this also be true of any other metropolitan district, without me covering the whole thing?

A That is right.

Q Did you take into consideration the effect that this

may have on the Latin American population of the State of Texas?

A Not particularly. I think there was one case where I began to wonder about it; that was in Bexar County.

Q Would you hallucinate, please, sir? elucidate

A Well, we were approached at one time -- I was -- about the gerrymandering which we hadn't -- didn't do because of some Mexican population down there.

Q Well --

A That is about the extent of it.

Q Yes, sir. Were you approached by the Mexicans or were you approached by others?

A I was approached by one Mexican who had friends down there, and he was a friend of mine.

Q Was he a political official?

A No, it wasn't an official.

Q Wasn't elected to political office?

A No.

Q Mr. Calvert, would it be fair to say that in your consideration and approval of the Senate and the House redistricting plans that you did not weight the Latin American elements concerned with the districting of those areas in which they were heavily populated?

A No. I tried to stay away from it.

Q In other words, would it be fair to say that you

completely ignored in your decisions the racial, whether it be Negro or Latin American, and ethnic and political interest of various minorities?

A Yes, I tried to ignore it because I didn't think it had a place in this. My interest was doing what the mass of the people wanted, and I think we accomplished it.

Q Yes, sir. Mr. Calvert, did you in your consideration attempt to make these districts as nearly equal as you could in regards to population?

A Yes.

Q Well, would it be fair --

A But, I didn't do any of that calculating. These crews that Crawford had working and the Legislative Council had working -- I didn't actually try to draw and measure and apply these --

Q I understand.

A -- these areas. I didn't try to do that.

Q And you were guided, then, with simply making them as near equal as you could by the facts applied by the people that had the information?

A That is right.

Q From a population --

A As it was presented on the map that they gave us; these crews that had worked that out.

Q When you say "crews" as I recall you are talking about

General Martin's crews and Mr. Johnson's crews?

A Yes.

Q And, your consideration, then, was, as I understand it, that General Martin was representing that they were legal and constitutional and would stand up and that the information supplied to you by the so-called experts, the people working on this, as to the equality in regards to population data as between the various districts?

A That is right.

Q And you completely disregarded --

A I looked at the figures, and as I recall they weren't too far off or they may have varied. What was a five percent -- It was not supposed to be more than five percent off of the average, whatever it was. Some districts were a little above it and some were a little below.

Q That, of course, would have to be. You couldn't --

A That is right.

Q -- make it.

A That is right.

Q Did you consider whether or not the districts had common interests? By this I mean that if you had a large Senatorial District, and by "large" I mean geographically large, I know you made them as near

population equal as possible, but a geographically large Senatorial District -- did you consider in your decision the common interest of the various people in this district?

A I don't recall giving that any particular study.

Q Yes, sir. Did you consider the voting records of the various smaller entities in these larger districts? In other words, if you had a district, for instance District 21, and I know that you are possibly not familiar with this until I show it to you, which goes from Northern Bexar County clear down to practically the Rio Grande Valley around Starr County, did you consider the voting records of, say, the people in, say, the northern part of Bexar County as opposed to the ones in Starr, Jim Hogg and Duval?

A What do you mean by "the voting records"?

Q Whether or not they had common political interest.

A No.

Q Did you consider the racial, ethnic or any of these other matters which we discussed -- similarities between the people at the northern part of this district and the southern part?

A No.

Q Did you consider whether or not they had common interests? In other words, whether their elected

Senator could fairly represent the extreme areas of the one district because of the common interest of the people in the district, did you consider this?

A (Witness shakes head)

Q You did not?

A I don't believe I did. I don't remember. Anyway, that wasn't the way I went about deciding.

Q Well, would you like to tell me in your own words exactly how you did? I think I know, but I mean in fairness to you tell me in your own words just how you did go about it.

A The whole thing was based on the divisions that were drawn on the map by this crew that was working and whether it stayed within the population brackets as it should and that it was legal -- the legal procedure. And, is this what the general public wants? Not as -- As opposed to the membership. I wasn't looking to the membership of the Senate or the House, but the people, and that is the way I tried to think of the thing all the way through. Now, I didn't do as much detail work on this as some of the others.

Q Yes, sir. I understand that. Of course, you were approached, and I am sure the others were too, by the various members of the House and Senate, naturally, wanting to protect their district as nearly as they

could to get re-elected.
A Yes, to some degree. Yes, some of them more than others.
Q Yes, sir. And, well, of course some of them were to be effected more than others, I am sure.
A Yes.
Q And, also there were certain members of each delegation -- by that I mean the House and the Senate -- who possibly had higher political aspirations for Congress and other offices that may want a particular plan devised and approved, is this true?
A I tried not to be influenced by any of that at all.
Q Yes, sir.
A The fact -- Like I said awhile ago, I did very little of the detail work.
Q Would it be fair to say, Mr. Calvert, that you relied on Mr. Martin and Mr. Johnson's office, who had access to these figures, to the law, constitutionality and so forth for their opinions regarding the legality of it, the fairness of it and the population figures and so forth?
A I relied on them greatly.
Q Yes, sir. Did you yourself do any particular research into the various things that we have discussed here?
A No.

Q Is it your opinion that the plans that have been devised -- again I am talking about the Senate and House --

A Uh-huh.

Q -- are as fair, just and equitable as they could be? Now, I realize that perfection is an absolute and that this is absolutely impossible to arrive at, but as fair and just and equitable as this committee could have made it under the circumstances that existed --

A I think they are. I think they are fair.

Q Just a moment, please, sir. Mr. Calvert, I am going to hand you a map of the Texas Senate Districts as enacted by your Board on October 15, 1971, and ask you to please take a look at it; that is from Mr. Johnson's office.

A Well, as I recall, this is what was furnished us, the drawing. There may be some changes made in some of these lines, I am not sure.

Q Well --

A I think --

Q If I tell you that map came from Mr. Johnson's office and was the plan that was adopted by your Board, if you will notice in the legend down there it says "Adopted on October 15, 1971 by the Texas Redistricting Board" do you have any quarrel with that?

A No.
Q Does it appear to be what you did approve?
A Yes.
Q I will call your attention to the bottom part of the map, to Senatorial District 21.
A Yes.
Q Now, this is the one. As I told you before, I represent a group from Bexar County. Now, you will notice that this district incorporates down to almost the lower Rio Grande Valley, which is Starr -?
A Yes.
Q -- Jim Hogg, Duval, Zapata. And you will further notice that at the northern extremity it goes in and takes the top half or the top portion of Bexar County.
A Yes.
Q Is that correct? It also completely encircles Districts 19 and 26.
A Now, what?
Q These are Senatorial Districts within Bexar County.
A Oh.
Q That is Mr. Kothman and Mr. Bernal's districts?
A Uh-huh.
Q Are you familiar with the north portion of Bexar County?
A Not particularly, no.
Q You don't know anything about the ethnic, racial or

political views?
A Not really.
Q All right, sir. Now, you used the term "gerrymandering" awhile ago. Looking at this map would you say that District 21 does any gerrymandering?
A I don't know whether it does or not. Not to my knowledge.
Q But it does completely encircle Districts 19 and 26?
A Uh-huh.
Q And does extend all the way from the Rio Grande Valley at the bottom to the northern part of Bexar County at the top.
A Guadalupe to Starr.
Q Well, it goes above Guadalupe, doesn't it?
A That is as far as it goes.
Q Could I see it a minute?
A If I can read that little print up there.
Q Well, you are correct. Guadalupe actually does extend north of Bexar there.
A A little bit.
Q Is it your opinion now, and was it then, that the people in this Senatorial District would have a common interest?
A You mean race-wise or what -- or anywise?
Q Let me give you an example. If they elected a State

Senator -- which of course they will do if this stands up -- from District 21, do you think that they could elect a Senator from within this District, whether it be from Northern Bexar County to the extreme southern part of Starr County, do you think that this Senator would represent a constituency that had a common interest in the Texas Senate -- in the laws and bills and so forth to be passed, considering the geographical area, the metropolitan as opposed -- the urban as opposed to the rural and so forth; would you have an opinion on that?

A It seems to me -- I don't have a fixed opinion on it. It seems to me that that area of the state -- their interests are common.

Q Including the northeast part of San Antonio proper?

A Well, up to that, I guess.

Q Well, what about -- Do you know where Alamo Heights, Terrell Hills and Olmos Park are?

A About.

Q Do you think they would have a common interest with the people from Starr County?

A I don't know whether they would or not.

Q Were you approached by either Senator Bernal or Senator Kothmann in regards to this?

A No.

Q Either District 21 or 26 and 19, which are their districts?
A No. I know both of them.
Q You know both of them?
A I know both of them.
Q Were you approached personally by anyone else, if you recall? I know you got a lot of letters and phone calls.
A (Witness nods head)
Q Sir?
A I got a lot of letters. If you all want them I will give them to you.
Q We appreciate that.
A I don't think you want them, but I will give them to you.
Q All right. I will try to get through in just a moment. Do you have any independent recollection at this time of being approached by anyone concerning any of these three districts, 19, 26 or 21?
A Only 26 and 21.
Q And --
A I was approached by one gentleman who was a friend of mine.
Q Yes, sir. I believe you said that awhile ago. Would you tell me who that was, please?
A He worked for the Attorney General at one time. What

the hell was his name? He was a Latin.
Q And, what was his interest?
A His interest was that we not allow any gerrymandering in order to defeat Joe Bernal, for instance.
Q In other words, his interest was in protecting Senator Bernal, is that correct?
A That is right. I don't see anything wrong with that. I didn't see anything wrong with it. I wasn't influenced by him. I could see his interest. But you asked me if anybody ever approached me, and he did.
Q Yes, sir. I am going to hand you a letter, which is identified as "PSA-1", which is apparently from Joe Bernal directed to the Legislative Redistricting Board, and ask you if you received this -- if you recall.
A Is this all one letter?
Q Well, with attachments and exhibits, Mr. Calvert.
A I don't remember. But, if I got it it is down there with the rest of them. I am pretty sure I got it.
Q Yes, sir. Could I see that, please, sir? Was this letter, or any of the attached exhibits, considered by you in anywise in your decision?
A I don't recall that it was. I had so many I couldn't classify all those letters.
Q I understand that, Mr. Calvert. I am sure you did have an abundance of mail, phone calls and various

communications with people that were interested in the redistricting, and I certainly won't expect you to recall each incidental item.

A Wait just a moment, I want this off the record.

MR. EASON: It doesn't make any difference to me.

MR. CUNNINGHAM: We want it on the record if he is talking about letters and everything.

MR. McDANIEL: Well, just don't say it if you don't want it on the record.

A I don't want it on the record. It has no bearing on the decision here, anyway.

MR. CUNNINGHAM: Let him go off the record, then. Take it off the record.

(Whereupon, a discussion was (had off the record.

MR. EASON: I believe that is all.

CROSS EXAMINATION

QUESTIONS BY MR. BERG:

Q Mr. Calvert, I am David Berg and I represent the unnamed proponent of the 87 percent Plan, I represent Curtis Graves of Houston, Harris County. Mr. Calvert, I am just going to ask you a very few questions concerning, from what I gathered, is the basis of your decision in this matter. If I am not mistaken,

you have relied a great deal on what the people had to say.

A I tried to. I think I did.

Q Now, can you tell me who those people were from Harris County specifically as you remember them?

A I couldn't list them.

Q Well, could you --

A What I could do, I could dig out of our files the ones who came here in a group with maps drawn for our consideration. I looked at them and listened to them and turned them over to Bob Johnson.

Q Would it be fair to say -- Excuse me.

A A few of them I knew, most of them I didn't know personally. Old Senator Braswell was one of them that used to be in the Senate. I could prepare a list of who they were.

Q Let's talk, for a moment, about Senator Braswell, who is now a practicing attorney in Houston.

A Yes.

Q Can you tell me who he was up here on behalf of?

A Harris County, being that was their -- Well, that was what they were interested in, Harris County being separate districts.

Q Well --

A That is what they were interested in. And, another

thing they were interested in was adding a part of those lower counties right below Harris.

MR. CUNNINGHAM: Fort Bend?

A Fort Bend. Adding a part of Fort Bend into their setup; that was the main thing they were interested in.

Q That was Senator Braswell's concern?

A Well, that committee that he was with.

Q What committee was that?

A It was about half a dozen of them. They came on their own.

Q Just a group of individuals?

A Yes.

Q Would you say they were from the poor sections of Houston?

A No.

Q Were they big businessmen?

A I would say they were big business.

Q Did you have many representatives from the poorer sections?

A No.

Q You did talk to Representative Graves, I believe, at the Legislative Redistricting hearings?

A No.

Q Did he appear before you, sir?

A Yes.

Q Okay.
A Before the Board.
Q Before the Board?
A At the first meeting, I believe.
Q That would be around August of '71?
A August 24th, I think.
Q You were in attendance?
A Yes.
Q Okay. In arriving at your decision, Mr. Calvert, would it be safe to say you relied to a great extent on what the businesses of Houston and Harris County had to say?
A Not as much as I did other things; that that was what the people down there wanted. And, I was assured it was legal and that was the way they wanted it.
Q What other things, Mr. Calvert?
A What did I say, other things?
Q You said that -- I asked you if you relied to an extent on big business in making your decision, and you said, "Not as much as other things" and I would like to know what the other things were.
A The things that came before the Board and that the Board talked about; that the multiple district down there was what the people down there wanted.
Q I am referring primarily at this point to the Senate,

Mr. Calvert. What things were brought before the Board that you relied on concerning the makeup of the Senatorial Districts in Harris County?

A I don't really remember. I know that they -- How many do they have down there; how many Senatorial Districts - five?

Q Let me provide you with a map of the new Senatorial Districts in Harris County. Here you are, sir.

A You mean this is a Senatorial District and this is a Senatorial District?

Q Yes, sir, and so on. This is a big Senatorial --

A Four, five, six -- I remember seeing it, but --

Q Now, what I want to get to is: what exactly caused you to decide, number one, for instance that this was a legal Senatorial drawing -- these lines were legally drawn up?

A Why did I think it was legal?

Q Yes, that is the first question.

A We were assured by our Attorney General, our lawyer, that it was legal.

Q You relied on the AG for that information?

A Yes. I relied on him for that -- for an answer in all of our court questions. He is my lawyer.

Q Did you take into consideration what the people had to say, what they wanted? Did you decide that the areas

that were drawn for Senatorial Districts should represent a community of interest?

A Well, this was in our minds, of course.

Q Okay, sir. Did you have some sort of memorandum advising you of the legality -- from the Attorney General of the legality of these districts?

A You mean some written memorandum?

Q Yes.

A No. It was his statement at the meeting.

Q This was his personal comments at the meeting that you relied on that they were legal?

A Yes. He said, if I can remember it, "I assure you that this is a legal procedure". This is what we wanted to know, I think all of us. I think all four of us, that is what we wanted, that it was legal and it was fair and it was what the people wanted. I feel like that all four members were sincere about what they were doing.

Q Which four were these, sir?

A I am leaving Gus Mutcher out because of his particular situation.

Q All right, sir. So, basically it was a four-man committee --

A I would say so.

Q -- after his problems. Have you at any time, sir,

testified or made comments into the record at the hearing -- At the Legislative Redistricting Council or Committee did you ever make any comments about who you relied on, what factors you relied on, that you recall?

A At the Board meetings?

Q Yes, sir.

A No. I listened and voted.

Q You have indicated that you didn't rely on big business as heavily as you relied on other matters.

A I didn't intend to leave that impression, because that wouldn't be right. It wouldn't be right for me to say, "Let's let big business do this and let's let the little fellow do that." That wasn't in there.

Q Is it your feeling, Mr. Calvert, that big business, then, wouldn't know any more about the situation than other members of the committee?

A I think big business probably would know more about it.

Q But that didn't cause you to rely more heavily on them?

A No.

Q Mr. Calvert, excuse me for the delay, you have indicated your offense or your revulsion with any form of gerrymandering during the course of this hearing.

A Yes. I don't think it was right to gerrymander something -- if I know the meaning of the word, the

application of it.

Q I am certain you do, Mr. Calvert. Mr. Calvert, I ask you again to look at this map of Harris County, and for a moment consider the geographical makeup of these districts, 13, 15, 6, 11, 17 and 7. Did you consider the geographic makeup of these districts in arriving at your decision -- in an attempt --

A I don't believe I did.

Q In an attempt --

A I don't recall.

Q You don't recall?

A I don't recall that. I tried to -- What do these Houston look like? I don't think I did.

Q So you didn't really rely upon the geographic makeup of the county?

A Not deliberately -- not intentionally I didn't.

Q Well, of course, -- No one is saying intentionally and deliberately, but is it your opinion, then? You signed this act and you agreed to it. Is it your opinion that these weren't gerrymandered --

A That is my opinion.

Q -- geographically?

A Yes, sir.

Q By "geographic gerrymandering" we also imply barriers like highways and that sort of thing too. Would you

consider the highways within a city or the makeup of the roads or system or bayou systems of a city?

A I don't recall that it ever entered my mind.

Q Did you check out the prior voting record of the particular segments of the city?

A No.

Q That was unimportant in Harris County to you -- as in other counties?

A What voting records are you talking about?

Q The voting records of the people of the city, how they voted, who they sent to the Senate.

A No, I wasn't interested in that. I was afraid you meant some voting record in the Senate.

Q Oh, no. What I am concerned with here is, at this point, is the voting record of the people within the counties.

A No, that had no bearing on me.

Q Whether they voted liberally or conservatively was of no interest to you?

A Well, I wouldn't know. I didn't make a study of that. It might make a difference to me but I wouldn't know that.

Q Mr. Calvert, in listening to the people of Houston were you able to discover their needs and desires in these matters concerning the Senate?

A Oh, not that I can remember, as to their needs. I think they were trying to get over to us that in their judgement this would be a proper approach to it.

Q Proper what?

A Proper approach to the redistricting, a proper redistricting. They had their own reasons, I presume. And, like I said awhile ago, this committee that came was mostly big business.

Q Mostly big business?

A Yes.

Q Mr. Calvert, do you feel the needs of the big businessmen of Harris County are the same or similar --

A I think they know more about it. I think they know more about the needs than the individual.

Q Big business knows more about the needs of Harris County than the individuals of Harris County?

A I feel that way. I never discussed that with them.

Q Yes, that is clear. But, what I am trying to drive at, Mr. Calvert, is whether you believe the needs of the individuals of Harris County are represented by the needs of big business.

A I wouldn't know. I don't think I would know.

Q You didn't consider that fact in drawing these lines?

A No. I didn't try to do that.

Q I didn't catch something awhile ago that I wanted to go

over with you. Did you say that Ben Barnes was absent, in your recollection, only once from the meetings?

A I think it was only once. I am not sure; it may have been twice.

Q Did the big businessmen you talked with express any concern over the corporate income tax?

A (Witness shakes head)

Q Never said a word about that?

A No.

Q Do you remember talking to Everitt Collier?

A About income tax?

Q About the Senatorial Redistricting.

A Who is he?

Q The publisher of the Houston Chronicle.

A I probably talked to him on the phone.

Q You just don't know him offhand?

A No.

Q Did you talk to Senator Jordan during the period of time you were concerned with redrawing lines?

A No.

Q What did the businessmen want to do with the district in Harris County?

A They wanted them cut into individual areas or districts.

Q What about the Senate; what did they want to do with that?

A I don't recall that they approached that. I don't think that was the purpose of their meeting down here. I think mostly it was the house.

Q Is there anything that I have left out or that you may have had your memory jarred about that may have served as a basis for your decision concerning Harris County that you haven't already discussed with Mr. Nathan Hecht, the prior attorney, or myself?

A No. I think that the overall statement, including me and the other four, I think were trying their best to do a good job.

Q I am certain of that. But was there any other basis, Mr. Calvert, that you have not yet discussed that went into your decision --

A I see what you mean. No.

Q -- to approve the Senatorial Districts of Harris County?

A I don't think so.

MR. BERG: I am going to pass the witness.

CROSS EXAMINATION

QUESTIONS BY MR. IDAR:

Q I am Ed Idar from San Antonio and I represent a group of Mexican American Intervenors in the case that was filed in Tyler, and we are particularly concerned with the House. We believe that your Board conceivably could have done a little better job, as far as we are

concerned, on House Redistricting. That is our position. Now, I am going to try to not be repetitious of what we have already gone into; there is no point in that. There are just two or three matters that I would like to button up. For example, one thing that I am concerned about, were you under the impression or are you still of the impression that in Dallas County your Board was giving them multi-member Senatorial Districts? In other words, do you know for Dallas County whether you put all the Senators into one district or into single districts?

A I don't remember. I really don't.

Q I was just wondering --

A I relied on the Senate District. I relied a lot on the action of probably Ben Barnes, figuring that he knew more about it. But I don't remember any discussion on that when it came to the Senators -- to the considering of the breaking up of the Senate District in Dallas County.

Q The reason for that question, I have here a copy of a news clip from the Dallas Morning News -- apparently this is a column. This must be a regular column in the newspaper that goes under the title of "Weather Vane". Now, apparently this was published on Sunday, November 21, 1971. I don't have the entire column and

I don't know who wrote it.

A Did it quote me in there?

Q Yes. Let me read it to you briefly and see if they quoted you correctly on this point. The first paragraph of this column reads as follows: "Comptroller Robert S. Calvert, the swing vote in favor of multi-member House Districts for Dallas and other counties in the five member Board's Legislative Redistricting actions, apparently thought Dallas also had multi-member Senatorial Districts. When asked if he favored a multi-member district for Senators who have individual districts, Calvert said he favors multi-member districts and said Dallas Senators were lumped into one district. Informed that Dallas Senators don't have multi-member districts, Calvert said, 'Well, I thought they did'."

A That is right. The only thing I resent about that is that he called me a "swing vote".

Q Okay. But the rest of the quotation, is that true and correct?

A That is just about what happened in that telephone conversation.

Q All right. Now, at the time that you all approved -- or at the time you personally approved the Senate Redistricting Plan you were under the impression then that Dallas had multi-member Senatorial Districts?

A I think that is right. Of course, one of these telephone calls takes you pretty much, but that is exactly what I said.

Q I realize that we can all make mistakes, and you were hearing from a lot of people and listening to a lot of people, but what I am curious about: was there any possibility that in acting on the House plan you might have also acted under the erroneous impression as to what you were doing to a particular town?

A I don't think so.

Q Is it possible that, for example, Bexar or Dallas County you might have thought you were giving them single member districts although they in effect were getting the multi-member districts?

A There was very little discussion about all of that as far as the Senate was concerned.

Q Well, my question was as to the House.

A I don't -- I don't think it entered into any of my decisions.

Q You have been around Texas a long time, haven't you, Mr. Calvert?

A Too, maybe too long.

Q How old are you, sir, by the way?

A Now, wait a minute. Do I have to give my age in this damn thing?

MR. McDANIEL: Go ahead and answer it.

A I am 79.

MR. IDAR CONTINUES:

Q I just wanted to establish that you are an old Texan, for the record and for the benefit of the judges who might be looking at this record. Will you concede with me that both the Mexican American and Black in this State have suffered, and still suffer, from rather serious social, economic, educational and other problems?

A That they have suffered?

Q And still suffer.

A Probably so.

Q For example --

A I am not smart enough to know.

Q I realize it is not your particular field of expertise and I realize you are not a sociologist.

A That is right.

Q But you are a citizen and I presume you read the daily newspaper and keep yourself fairly well informed of what goes on in the State. For example, are you familiar that we presently have under litigation in the Federal Courts school districts involving Corpus Christi, Dallas, Waco, Austin and others?

A Yes.

Q And, that in all of these lawsuits we have Mexican

Americans and Blacks involved?

A Yes.

Q And, that they are making rather serious allegations as to their treatment about our educational system? Are you further aware of the fact that just within the past week or so we have had a decision by a Federal District Court that is going to have a tremendous impact on the financial structure of our public educational system?

A I was reading it in the newspaper.

Q And the fact that that suit was brought by the Edgewood Independent -- rather by people or residents of the Edgewood Independent School District in San Antonio, which is almost totally Mexican American, and you will concede with me that these people have been suffering, or apparently -- if we are going to go by what the Court held -- have suffered under the present financial structure of our State policy, I should say, as it relates to public education? Will you concede with me that we also have serious health problems affecting both of these schools?

A Health?

Q Health. And that we may have some fairly serious problems having to do with law enforcement and the administration of justice?

A I will concede with you that they have got problems in all those fields.
Q All right, sir.
A But as far as being, you said, expertise on it, I am not.
Q I realize that. But will you further concede with me that the Texas Legislature, both the House and Senate and both of them acting together in the enactment of legislation, could be a very strong factor in what is done about some of these problems? In other words, we have a lot of people in Texas, I don't know, seven or eight million or nine million, I don't know what the present total population is, and we have a lot of different interests in these tremendous populations, is that correct?
A Sure. I can't see where that has anything to do with --
Q Well, I am going to get to the point in a minute. Now, within this tremendous population group we have a lot of interests, we have your Mexican Americans, right?
A (Witness nods head)
Q We have your Black, we have your business people and you have a lot of other political and other elements of all types, this is all true under our system of democratic government, and the only recourse as far as

legislation is concerned that all of these different groups may have to seek relief of these problems is through the Texas Legislature, through their Senators and Representatives in these bodies, is that correct?

A I guess. I think so.

Q Therefore, my point is: do you feel that as far as the Mexican American and Black that they should be entitled to fair representation in the Texas legislature, particularly the House, which is the larger body, so that some of their interests can be brought -- can be focused on and acted on?

A Sure. I think they ought to be represented. And, I think they are under this redistricting.

Q All right. Now, let me ask you, sir. Now, do you sincerely believe that under a multi-district -- under a multi-district -- under a multi-district plan for electing the Texas legislative -- rather the Representatives, say, from Dallas and Bexar County that the Mexican American and Blacks have an fair opportunity to elect representation as they would under a single member plan?

A Sure. I can't see any difference in why they wouldn't. They live everywhere.

Q Well, are you familiar with San Antonio?

A A little bit.

Q You haven't visited in the city in all these years?
A I soldiered over there.
Q Have you been on the West Side?
A That was a long time ago.
Q Have you heard of the West Side in San Antonio?
A I believe around 410 West.
Q Well --
A Over in that district, I am not too familiar.
Q Well, will you concede with me in the major cities, like Dallas, Houston and San Antonio, these particular minority groups by and large are concentrated in certain geographical areas within a given city; you know that much?
A Well, that is natural.
Q Right. Will you further concede with me that in Dallas and Bexar County, for example, those geographical areas where these groups are concentrated would be large enough population-wise to where they would have an opportunity to elect several representatives under a single member district plan?
A They ought to be able to elect one in their district where they live.
Q Certainly. Let me ask you this --
A They would have representation.
Q Dallas County has approximately 1,300,000 population.

Will you concede that is about right?

A I imagine so -- something like that.

Q And, I understand the Legislative Redistricting Plan for the House, that your Board adopted, the average size single member district is, I think, somewhere around 74,000 or 75,000.

A Yes, that is right.

Q All right. Now, how would you compare the cost of campaigning in a district that only has 75,000 people, and presumably a lot less voters, with campaigning countywide or citywide in a district that takes in 1,300,000 people?

A I think it wouldn't cost as much for me to solicit 70,000 as it would a million.

Q Did you consider these factors at all?

A No.

Q You did not consider that?

A It didn't enter into my thinking when we voted on these districts.

Q All right, sir. So, you did not consider -- Let me ask the question and I will move on to something else. So, you did not consider the cost of campaigning in the district with, say, 75,000 people in contrast with campaigning in a district consisting of 1,300,000 people?

A In this district did I consider that?
Q Yes.
A No.
Q That was not a factor in your thinking at all?
A No.
Q All right. Let me go on to something else.
A I didn't go that far on it.
Q You don't think that would have been a fair factor to consider in determining whether to give the major cities single city membership districts as you did Harris County?
A If the people in the area had wanted it that way we probably would have done it.
Q All right. Now, you have made some reference to the fact that you had apparently quite a bit of correspondence from Harris County.
A Yes.
Q Did you have as much correspondence from Bexar and Dallas Counties?
A No. We had more from Dallas, but not from Bexar.
Q Not from Bexar?
A Not that I recall. I didn't tabulate it; I am just recalling the mail that came in and the calls. Much more came in from Dallas than from Bexar.
Q Assuming that you had had, say, 500 letters from Bexar

County and all of them asking for a single member district, would that have weighed heavily in your decision?

A I think it would.

Q Do you think that would have been a crucial factor in your decision?

A I don't know. It didn't happen that way. I don't know.

Q All right. It was a hypothetical question. You seem to leave the impression that one of the major factors in your own decision in approving the plans that we have been talking about was the amount of people that you heard from -- or the number of people that you heard from either by letter, telephone or in person or who appeared before the Board in the different areas that were in question or that are in question here, and you indicate that you didn't hear but from very few people in Bexar County.

A That is right.

Q I see. And, that was a factor in your decision?

A (Witness nods head)

Q Okay. Were you concerned at all with the fact that you had some constitutional issues involved? For example, the courts have spoken on redistricting matters as to whether a particular redistricting plan is going to minimize or cancel out or dilute the voting strength of

a minority group such as the Mexican American or the Black?

A That didn't enter into my thinking.

Q You were not concerned with that principle?

A I don't mean I wasn't concerned.

Q All right.

A I am concerned about all of these problems, but it wasn't a factor in this Redistricting Board.

Q All right. Do you recall whether --

A My thinking, I mean.

Q Do you recall whether the Board -- I will say Body -- or any of the members of the Board, if you know, firsthand, gave the staff any instructions as to the implementation of this particular constitutional principle that I have just stated to you?

A (Witness shakes head)

Q Did you ever give the staff any guidelines as to whether they should come up with a plan that should be a single member district for the major cities -- all the major cities, not just Harris County or Houston or multi-member districts? Let me rephrase it.

A Start over again. I don't know what your question really was.

Q Do you recall whether the Board, I will say Body, ever gave the staff any instructions -- Now, the staff has

to know what the boss wants when they start out on the job.

A Yes. You are talking about these people that actually drew the maps.

Q Right.

A No. I didn't have anything to do with that, except to see it.

Q Apparently the Texas Legislative Council under Mr. Johnson, that particular staff, and apparently one or two other people and some other people from the Attorney General's office, according to your testimony, were the ones that actually physically drew the maps --

A That is right.

Q -- and added up the figures and were satisfied that the population deviations were going to be within what they call -- within what the law required. Now, a staff -- I mean, the staff was subject to the orders of the Board, is that correct? Weren't they acting under your --

A The Board -- In a sense they were because they were working under the chairman.

Q And the other members of the Board.

A They were working under Crawford Martin and he was chairman of this Board.

Q Well, let me ask you, did the Board at any time delegate

its responsibility to Mr. Martin, as far as guiding the staff as to what they were going to do?

A When they elected him chairman didn't they do it?

Q Well, do you know whether Mr. Martin, under the directions of the Board, ever gave the staff some guidance, for example, as to Dallas and as to Bexar County, whether they should go for multi-member districts or single member districts?

A I don't know.

Q Do you ever recall this -- any such guidelines being made in your presence?

A No.

Q Did you ever make any inquiry to determine what kind of guidance the staff was receiving?

A Oh, it might have been discussed. I talked with Crawford Martin every once in awhile about what was going on, but I don't recall any specific thing like that.

Q You know, it would have taken a lot of additional figuring for Dallas and Bexar Counties, for example, not to talk about the other multi-member districts throughout the State, it would have taken a lot of additional figuring for the staff if they had had to divide those counties into single member districts.

A Yes.

Q Did the Board ever make a policy decision on behalf of the State of Texas to instruct the staff that on these major counties, aside from Harris, they were to go for multi-member districts?

A Not that I know of. I never issued any directives to any of them.

Q And, you don't know of any other Board member that did?

A No, except Crawford.

Q Now, I think I am about through, if you will bear with me another minute or so. Now, do you recall that -- I believe it was the second -- I suppose it would have been the second public meeting relating to House redistricting that the Board held? I may be incorrect whether it was the second or third, but anyway the meeting of October 6, 1971. I have the proceedings here of a hearing that the Board held on House reapportionment; they reflect the fact that you were present at that meeting.

A I was present at all of them.

Q They further reflect the fact that among the people who testified were Senator Oscar Mauzy.

A Yes.

Q A Mr. Vidor Robertson, Jr.

A I don't remember him, but I know Oscar.

Q Professor Albert W. Alschuler.

A Yes.
Q Do you remember his being there?
A (Witness nods head)
Q And Mr. Phil Strickland as well as Joe Loenoso, Kenneth Keeth and there was a Mexican American there by the name of John Almaz from San Antonio that came in late.
A I know what meeting that was.
Q All right.
A It was over in the Senate Chambers.
Q Okay. Now, the reason I wanted to be sure you recall that meeting is because I wanted to ask you: do you recall Mr. Robertson's testimony?
A Not specifically.
Q All right. The minutes here reflect that Mr. Victor Robertson, Jr. of Dallas was with the firm of Lewis, Noles and Grace, which is presumably a very well known public relations and polling firm which does polling or has conducted polling for various political candidates and has done market research for other people; do you recall that?
A Not that specifically.
Q I see. But, do you recall the fact that Mr. Robertson testified to a number of polls that were taken among the people in Dallas County; for example, he testified that he had conducted a poll in January of 1966 for

Senator Maxey? You don't recall that?

A No. There were about seven of them, weren't there?

Q Sir?

A Wasn't there about seven that spoke that day?

Q Yes, there was a number of people that spoke that day. I am just wondering whether or not you recall this particular testimony from Mr. Robertson.

A I listened to all of it, but I don't recall any of the arguments that they put up.

Q Well

A Maybe I wasn't listening that close.

Q Well, maybe so, I don't know. But, do you recall Mr. Robertson testifying that the last poll that he had taken among the people in Dallas, which apparently was toward the latter part of 1968, that 61 percent of the people in Dallas preferred single member district for that county?

A I don't recall it.

Q Apparently this testimony made very little impression on your mind.

A You are right.

Q And you gave it very little consideration.

A You are right.

Q Is there any particular reason why you did not give it more consideration than you appear to have? Were you

not impressed about a poll that allegedly represented the view of 61 percent of the people of Dallas in contrast to those who must have telephoned or sent letters in?

A Frankly, I wasn't impressed by many of the speakers that appeared before that Board.

Q Okay.

A How are you going to be impressed by seven people going over and over and over so damn many -- excuse me, don't put that in there -- that you would have to be a Socrates or something like that to even know what all it said.

Q If you don't mind, I would like to go back on the record.

A You want to get back on the Board?

MR. McDANIEL: You were on the record all along.

MR. IDAR CONTINUES:

Q Do you recall another meeting that was held on September 30th, again on House reapportionment, and at this meeting you had Dick Reed and Mr. Blythe, Joe Allen, Bob Gammage, Fred Agnich, John Hill, Earl Luna, Jack Blanton, John Boyle, Dave Pickett -- and skipping over some of the names -- Mr. Earl Luna and Mr. Tom Crouch and a number of other people?

A I remember that meeting.
Q And apparently at this particular meeting some were in favor of multi-member districts and others were opposed.
A That is right.
Q All right. Do you recall what impression Mr. Lane's testimony made upon you at that meeting?
A Must not have been very much, I don't know. I don't remember.
Q Well, was this another meeting where you just didn't pay any attention or didn't consider or weigh heavily whatever the people said?
A I didn't weigh it too heavily, frankly.
Q Well, I have given you the names, and the record reflects that you probably had somewhere around 20 people or so testifying at these two public hearings.
A That is right.
Q Now, you have earlier testified that one of the major factors in making up your mind as to these plans was what the people from these areas wanted. Now, you have indicated that you didn't care too much or didn't weigh too heavily whatever these people said at this particular meeting, so are we then to assume that you relied mainly on telephone calls or correspondence to determine what the people wanted from these areas?
A Largely. Now, don't get me wrong. I listened as closely

as I could to all those speeches.

Q But you didn't weigh them too heavily --

A (Witness shakes head)

Q -- as reflecting what the people wanted?

A There was two sides on every one of them.

Q I see.

A Every one of those meetings. I don't mean to be --

Q Would it be fair to say, Mr. Calvert, that actually you let other members of the Board take the lead in the matter, and the Attorney General and Mr. Barnes came up with a plan and you were willing to go along with them and rely on their judgement?

A You might say to some extent, yes. Not entirely. I did my own thinking, but we seemed to agree on all of it and I didn't have any --

Q Did you have any strong conviction as to single member districts for the major counties apart from Harris County?

A No, I didn't have any strong feeling except to decide "is this what the people want".

Q And, by "the people" you are talking mainly about those that called you by phone or wrote you letters?

A Yes, and what I listened to all this crap.

Q How would you ever determine -- Now, let me ask you this: did you have many letters from Mexican Americans

or Blacks?

A I don't believe I did.

Q Did you have as much as, say, one percent of the letters that you received from either one of those groups?

A I couldn't give you a percentage, no.

Q Were you concerned at all to determine what the feelings of the two population groups might be?

A Yes, I was concerned about the whole overall thing.

Q But how did you specifically go about determining what the feelings of the Mexican Americans or the Blacks were?

A I didn't eliminate them down to any category.

Q I know, but I am trying to determine -- You say you had very few --

A They live out there. They live out there among the people; they live in those districts and they have got the same --

Q My question is this. Now, since you apparently relied very heavily on telephone conversations and letters that you received, and you have conceded that you heard from very few Mexican Americans or Blacks, I am wondering if you made any kind of an effort to determine what their feelings were.

A I didn't go out soliciting any, no.

Q Since you didn't hear from them then they just didn't

account for much, is that right?

A Now, you are --

Q Okay. That might have been unfair.

A That is a leading question.

MR. IDAR: That is all.

CROSS EXAMINATION

QUESTIONS BY MR. GREENBERG:

Q Mr. Calvert, my name is Bob Greenberg and I am from Dallas and I represent the Plaintiffs in the Marriott case. And rather than asking you the same questions that have been asked before, I want to adopt all the questions that my brother lawyers have asked and adopt the answers that you have provided, if that is all right with you, and let those be my questions and your answers as well as the other lawyers' questions and your answers. Is that all right?

A That is perfectly all right because I couldn't answer yours any better anyway, so it is all right.

MR. GREENBERG: All right. Thank you.

MR. McDANIEL: Let's take a few minutes break.

(Whereupon, there was a

(recess at this time.

CROSS EXAMINATION

QUESTIONS BY MR. CUNNINGHAM:

Q My name is Brian Cunningham and I am representing Intervenors George L. Allen and others from Dallas County. I am primarily concerned with the redistricting in Dallas County, Texas, where you voted for multi-member instead of single member districts; do you understand?

A Yes, sir.

Q I only have three or four questions. First of all, I understand from your testimony that you were concerned with what the people wanted, is that correct, Mr. Calvert?

A That is what I tried to do.

Q Now, were there any people, Black people, from Dallas County that contacted you wanting you to vote for single member districts?

A Not that I recall. There might have been some or telephone calls, I don't remember, as a group. I don't recall.

Q Okay. Do you know how many Blacks there are in Dallas County?

A No, I don't, except I know there are a lot of them.

Q Okay. Well, do you remember when the redistricting plan for Dallas County was first presented to you?

A (Witness nods head)
Q When, sir?
A Early in our discussion. And, I might just substitute something here. My question wasn't about Dallas County being multiple and my comment was why -- and I wasn't thinking about Harris County -- Dallas County. Why change it? It has been that way forever that I can remember, hasn't it, countywide -- run countywide? Why change it? That was my thinking.
Q And, this is your reason for voting for multi-member over single member districts?
A Yes.
Q Don't change what has been for a number of years?
A That was my thinking.
Q And this did not take into consideration what the population of the Blacks were or what percentage they comprised or the number of precinct chairmen there were or anything?
A I presumed it had been just the same way for years and years.
Q In other words, your primary concern was to maintain in Dallas County the status quo?
A That is right. And that was early in the game when we first began to talk about it. I hadn't even begun to think about Harris County.

Q In fact, then you never thought about single member districts for Dallas County, Texas?

A No.

MR. CUNNINGHAM: That is all.

MR. IDAR: I have just one question.

RECROSS EXAMINATION

QUESTIONS BY MR. IDAR:

Q In reply to Mr. Cunningham's last question you indicated your primary concern was to maintain the status quo in Dallas County.

A Well, that is right. That is my answer there, because early in our discussion --

Q I am just restating --

MR. GREENBERG: Let him finish his answer.

MR. CUNNINGHAM: Let him finish. Go ahead

A I was going to say the same thing. Early in the discussion my thought was, and I was thinking about Dallas County and not Harris County, it has been this way for years so why change it.

MR. IDAR CONTINUES:

Q My question was whether that was the same logic that you used, say, for Bexar County, it has been that way for years so why change it, would that also apply for Bexar County?

A Probably was, but I don't remember discussing Bexar

County like that. I do remember discussing Dallas County like that early in the game.

Q Would it be fair to say that since you didn't hear from too many people in the other areas, including Bexar, you weren't concerned with changing the status quo from the other areas?

A No.

MR. IDAR: That is all.

MR. McDANIEL: Anybody else?

MR. LUNA: Yes, sir.

CROSS EXAMINATION

QUESTIONS BY MR. LUNA:

Q Mr. Calvert, my name is Earl Luna and I represent Roy Orr, the Chairman of the State Democratic Executive Committee in this case.

A Excuse me. Didn't I hear you talk at that first meeting?

Q Yes, sir.

A Okay. I have got you spotted now.

Q And, I was speaking there, I believe, as Democratic County Chairman of Dallas County.

A As I recall.

Q Mr. Calvert, having been generally familiar with Dallas County for years, you are aware that we have Blacks and people with Mexican American surnames as precinct

chairmen is the areas where they live in Dallas County, are you not, sir?

A Well, I never had thought of it, but it is reasonable.

Q And, as a member of the Board I want to hand you a copy of a resolution which was passed by the Dallas County Democratic Executive Committee and ask you if you were sent a copy of that resolution that I have now handed you, whereby the Dallas County Democratic Executive Committee composed of all of the precinct chairmen all over Dallas County asked the Redistricting Board to consider leaving Dallas County in multi-member districts so far as the House is concerned? You had the benefit of that information, did you not, sir?

A Yes. You spoke on that part up there.

Q Now, Mr. Calvert --

A Your name is not Lamy. I asked you if you were his to some Lamys, but it is Lane. I remember now.

Q Mr. Calvert, in arriving at your decision they have asked you some one, two, three, but I assume as a member of the Board you considered all the evidence and information that came to the Board and then finally decided to approve the plan that you ultimately signed, is that right?

A That is pretty accurate.

Q Now, you have worked with figures and math and finance

all of your career, have you not?
A Uh-huh.
Q Now, there are small differences, variations, in some of the districts over the State but in your opinion are they as reasonably close as could be?
A Population-wise?
Q Population-wise.
A Yes.
Q They are as reasonably close as you could get them?
A I paid particular attention to that and I thought they were reasonably close. They didn't come down to two percent or anything like that.
Q They weren't perfect but they were as close as you could get and put the puzzle together statewide?
A That is right.
Q Mr. Calvert, I believe you have told us that you are not a lawyer.
A No.
Q And as far as whatever the legal elements that the United States Supreme Court has required be in one of these plans, you asked the lawyers to advise you and guide you on that legal part of it, did you not?
A Yes, absolutely. I expected them to.
Q Yes. And, if there was an element -- whatever the elements were that the law required insofar as race or

particular types of voters -- if the law required that then you asked the staff and the lawyers to see to it that the plan contained those things?

A I requested [illegible], whether I asked them or not.

Q Yes, sir. And, whether you did or did not in your own mind take into consideration a particular element, you requested the legal advice to examine the plan and see to it that it contained those elements that the law required?

A I requested it.

Q And, as far as you are concerned you feel confident that this plan insofar as the House and Senate for that matter is concerned, contains all of the legal requirements and is given consideration to all of the areas that the United States Supreme Court requires?

A I don't know much of what they require; I have general information that there is some requirements.

Q Yes.

A And we -- I had, I hope we were within it. I thought we were.

Q You asked the lawyers to examine it with particularity and try to see to it that you were within the guidelines that the United States Supreme Court [illegible]

A That is covered by Stanford's statement that what we did was legal.

Q Yes, sir.
A He was specific about that.
Q Yes, sir.

MR. LUNA: I believe that is all.

MR. CUNNINGHAM: I have two or three more questions.

RECROSS EXAMINATION

QUESTIONS BY MR. CUNNINGHAM:

Q Mr. Calvert, this is Cunningham again. Do you know how many Blacks there are on the Dallas County Executive Committee?
A I have no idea.
Q Okay. So, you do not know whether they constitute a majority, minority or one percent, do you?
A No.
Q So that the letter that you -- or the resolution that you saw presented by Mr. Luna may not reflect what the Blacks in Dallas feel, is that correct, sir?
A It may not. I don't know.

MR. CUNNINGHAM: Okay.

MR. McDANIEL: Anybody else? Excuse me, Brice, I thought you were through. I am going to ask him a couple or two, but I want to make sure everybody else is finished.

MR. CUNNINGHAM: I have something else

but maybe it will come back by the time you get through.

MR. McDANIEL: I am Sam McDaniel, Mr. Byrd.

CROSS EXAMINATION

QUESTIONS BY MR. McDANIEL:

Q Mr. Calvert, is it accurate to say that one of your primary considerations was not the favor or disfavor of any particular group of people?

A Absolutely.

Q In other words, as far as you were concerned these were people and not Black people or white people or Mexican American or German people or Jewish people or Catholic people or what kind of people?

A I wanted to be fair and equal.

Q All right. Now, are you aware of the fact that in certain parts of the State, particularly in the San Antonio area and the Rio Grande Valley, as well as perhaps to a lesser extent in El Paso and Hudspeth County and various other places that we have a very high Mexican American population?

A Oh, yes, I knew that.

Q And, do you know Congressman Kika De La Garza from the Valley?

A Yes.

Q And Congressman Henry Gonzalez from San Antonio?

A Yes.

Q Both of whom are Mexican Americans, are they not?
A I know both of them.
Q And they are multi-member districts both in San Antonio and in the Valley, are they not -- Hidalgo County, or do you recollect that?
A I don't remember.
Q The point I am driving at is that no particular effort was made in those areas where the Mexican Americans predominate, or very close to predominate, to in any way restrict their political effect there, was there?
A No, not from my mind.
Q In other words, you just tried to take people and treat them equally?
A That is what I tried to do.
Q That is all I have.
A I might have messed it up, but I tried.

MR. McDANIEL: Okay. Thank you, sir.

Robert S. Calvert

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

SUBSCRIBED and sworn to before me by the said witness, ROBERT S. CALVERT, on this the _____ day of _____, A.D. 19__.

_____
Notary Public in and for
Travis County, Texas

THE STATE OF TEXAS I
I
COUNTY OF TRAVIS I

I, JACK D. SYKES, a Notary Public duly commissioned and qualified in and for the County of Travis, State of Texas, do hereby certify that, pursuant to agreement of counsel, there came before me on the 28th day of December, A.D. 1971, at 9:00 o'clock A.M., at the Supreme Court Building, Attorney General's Office, Austin, Travis County, Texas, the following named person, to-wit: ROBERT S. CALVERT, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in these causes; that he was thereupon carefully examined upon his oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness; and that the said witness read the same and subscribed his name thereto.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF I have hereunto set

POOR COPY

my hand and affixed my Notarial seal on this the ____ day of _____, A.D. 19___.

JACK D. SYKES
Notary Public in and for
Travis County, Texas

My Commission expires 1st day of June, A.D. 19___.

Barnes

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CURTIS GRAVES, ET AL.	I	
	I	
VS.	I	NO. A-71-CA-142
	I	
BEN BARNES, ET AL.	I.	
DIANA REGESTER, ET AL.	I	
	I	
VS.	I	NO. A-71-CA-143
	I	
BOB BULLOCK, ET AL.	I	
JOHNNY MARRIOTT, ET AL.	I	
	I	
VS.	I	NO. A-71-CA-144
	I	
PRESTON SMITH, ET AL.	I	
VAN HENRY ARCHER, JR.	I	
	I	
VS.	I	NO. A-71-CA-145
	I	
PRESTON SMITH, ET AL.	I	

APPEARANCES

Mr. David R. Richards, of Austin, Texas,

Appearing on behalf of Plaintiffs Diana Regester, et al.

Mr. Robert M. Greenberg, of Dallas, Texas,

Appearing on behalf of Plaintiffs Johnny Marriott, et al.

Mr. Mickey McGuire and Mr. Nathan W. Eason, of San Antonio, Texas

Appearing on behalf of Plaintiffs Van Henry Archer, Jr., et al.

APPEARANCES (Cont'd)

Mr. Stuart Nelkin)
) Of Houston, Texas,
Mr. David Berg)

Appearing on behalf of Plaintiffs Curtis Graves, et al.

Mr. Walter Irvin)
) Of Houston, Texas,
Mr. Cleo Steele)

Appearing on behalf of Plaintiff Intervenors Washington, et al., in the Tyler case.

Mr. Ed Idar, Jr., of San Antonio, Texas,

Appearing on behalf of Intervenors in the Tyler case.

Mr. E. Brice Cunningham, of Dallas, Texas,

Appearing on behalf of Intervenors Conrad, et al.

Mr. Earl Luna, of Dallas, Texas,

Appearing on behalf of Defendant Roy Orr.

Mr. Sam McDaniel, Assistant Attorney General of Texas;

Mr. Al Curry, of the firm of Fulbright, Crooker & Jaworski, of Houston, Texas,

Appearing on behalf of Defendants.

- - - - -

DEPOSITION OF BEN BARNES, a witness of lawful age, taken on behalf of the Plaintiffs, Diana Bagester, et al., in the above entitled causes pending in the District Court of the United States for the Western District of Texas, Austin Division, pursuant to the notice heretofore issued and the agreement hereinafter set out, before Opal Locke, a Notary Public in and for Travis County, Texas, at the Supreme Court Building, in the City of Austin, Travis County, Texas, on the 29th day of December, 1971.

(The deposition was taken in (accordance with stipulations (as to deposition of Crawford (C. Martin, as follows:

MR. RICHARDS: Do you want to consider, Sam, that this is taken by -- I guess it is taken pursuant to notice; inasmuch as General Martin is a defendant, do you -- he is a defendant in some of the cases?

GENERAL MARTIN: I am a defendant in some, and not in some of the others.

MR. RICHARDS: I didn't know whether Sam wanted to treat it just by notice, or how you wanted it.

MR. McDANIEL: I have no objection to

treating it as if it were taken by notice, and my only thing is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And so we -- do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving General Martin's unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present General Martin's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. McDANIEL: That is correct. That is correct.

MR. LUNA: For the State Chairman, we do not waive our right to cross-examine him at the trial, and in the event he should not be available at trial, we do not then waive the use of this -- if he is available, but is not placed on the witness stand, we don't waive our right to cross-examine him at the trial.

MR. RICHARDS: Well, let me be sure I understand. Suppose that General Martin is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of trial?

MR. LUNA: I reserve the right to examine him in person.

MR. RICHARDS: Well, then, at least you are on notice from me that it is going to be my position that if you have questions to ask General Martin, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are here pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as first-hand testimony.

MR. LUNA: I understand.

MR. RICHARDS: All right. Sure.

MR. ZIMM: I may ask him some questions today, but I am simply not waiving any of my rights by participating in this deposition that I don't affirmatively waive thereby.

MR. RICHARDS: Is there anybody else who has got a position, attorneys who are present who want to put any position of record in the case?

BEN BARNES,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Berg:

Q What shall I call you, Governor or Ben?

A Ben is fine.

Q What about Governor-elect? Premature?

MR. MCCONNICO: Each of you, if you would, please, identify yourself to the Lieutenant Governor and tell him who you represent so he can sort of keep track of your questions that way, he will know in what context they are asked.

Q My name is David Berg, and I represent Curtis Graves in the Harris County lawsuit. The questions I am going to ask you pertain primarily to the senatorial district drawn for that area. I am going to show

you a map of the new senatorial district that was taken from the newspaper, but I would ask you if you are familiar with that map and is it the new senatorial map for Houston or Harris County?

A I will answer it is, assuming that the folks printed the right redistricting map, and I assume they did.

Q Well, now, does anybody have the actual map that was approved by the Legislature, of Harris County?

(Discussion off the record)

Q Here is the map that was approved by the Board, I believe.

A Fine.

Q I am primarily concerned with the bases that were relied on by you and by the other members of the Board or the Commission in determining that this would be our new senatorial setup in Harris County. Just if you would in very general terms -- well, first tell me how many meetings of the Board you attended.

A Well, I attended all the meetings of the Board with the exception of one, and that was a public hearing that was held, and I had a prior commitment. The Chairman of the Commission, Attorney General Martin, scheduled the hearing, and I really didn't know of

it till that morning, and I was already scheduled to be in San Antonio to make a speech, but I attended all the meetings other than that one.

Q Well, now, did you talk to other people other than the other members of the Board about the redistricting in Harris County?

A Oh, yes, I took -- we had a lot of correspondence on all the redistricting bills, the House and Senate bills. We had telegrams, I had delegations come see me from throughout the state, I had phone calls, there were a lot of people interested, and of course, I suppose some of the most interested people in Texas were the members of the Texas Senate that were interested in running for re-election. I would say that they had more than a passing interest in how the lines would be drawn.

Q I think that we stipulated to that. There is a Plaintiffs' Exhibit 2 which is the Chamber of Commerce of Harris County proposed map. Do you know there that is, Sam?

(Discussion off the record)

Q Envision, if you will, a proposed map from the Harris County Chamber -- Houston Chamber of Commerce. Did you meet and talk with the members of the Chamber of Commerce, Mr. Barnes?

A I don't know whether I met with anyone that specifically said that we are representing the Houston Chamber of Commerce. I remember what you are talking about. You are talking about -- it was in an orange folder. I remember seeing it.

Q Right.

A I do remember seeing that. I do remember the folder was orange. I don't know that I was present when the Chamber of Commerce -- I don't even know who was the president of the Houston Chamber -- I don't know if they physically came up here and made a presentation to the Commission. I don't believe they -- or maybe they did. I am not -- I cannot say for certain in my mind whether someone came to a public hearing and presented this, but I saw it and knew it was the Houston Chamber of Commerce map, yes.

Q Mr. Barnes, the Houston business community was very interested in this map, was it not, or in this new senatorial district?

A Oh, I assume that everyone that was interested in politics in Harris County, the business community, the labor community, the politically active Democrats, and politically active Republicans were all interested in the map.

Q But just talking for one moment about the business establishment in Houston, they were very interested in this, weren't they, among others?

A Oh, I think it's a safe assumption that there were some people -- it's always hard to determine who the business establishment is or who the labor establishment is, but yes, there were certainly business men in Houston that were interested in this redistricting map.

Q Well, now, in the past three days, Mr. Barnes, we have deposed many people involved with the redrawing of the map. No one seems to know, no one seems to remember the words, corporate income tax, and I am just wondering who you would say constructively represents the anti-corporate income tax group from Houston.

A Oh, I would say that the majority of the businessmen in Houston were opposed to a corporate income tax while some of them were for it, but not to editorialize the way you have asked the question, but I will use my prerogative till you stop me. As far as the corporate income tax and the Houston or Bexar redistricting, I didn't hear of a corporate income tax nor did the corporate income tax ever cross my mind during redistricting. That came about after

the redistricting map was drawn, and someone made that political accusation.

Q Let me ask you this. Did you ever talk to Everett Collier about the senatorial districts; did he offer his advice on how they should be drawn?

A I don't know that Everett Collier offered us specifically -- yes, I talked to Everett Collier and talked -- I think I talked to Bill Hobby also about -- talked to both publishers of papers. I am not certain that I talked to Bill about senatorial redistricting. I talked to Bill about the fact that I would like to see individual member districts in Harris County in the House redistricting. I knew we had a discussion about that.

Q What about Everett Collier, did you talk to him about the senatorial redistricting?

A Yes, I am sure that I talked to Everett Collier about House and Senate redistricting.

Q All right. Let me ask you this. He is the publisher of a newspaper there. In your discussions with him did Everett Collier ever mention his motivation coming to you; what was his reason for coming to talk to you about this map, other than civic pride and that sort of thing?

A Well, I am not going to doubt that the reasons why

a newspaper publisher -- I talk to newspaper publishers about various and sundry issues that come before the Lieutenant Governor. I assume that he was interested in it as far as Harris County. I knew of one thing that nearly everyone from Harris County talked to me about. They were very concerned about Harris County, we taking the surplus in Harris County and dividing it into four or five Senatorial districts, which was opposed by several different groups representing rural areas of Texas and several rural senators who didn't want to -- who would have loved to have taken the surplus in Harris County and divided it several different ways to protect their district---

Q To protect themselves?

A Right, and so---

Q Was Everett Collier interested in that?

A Yes. Everett Collier, I think if my memory serves me correctly, that that was the main reason for Everett Collier talking to me, was to make certain that Harris County got all the representation they were entitled to.

Q Well, now, you are familiar with -- as a politician of long standing in the state, you are familiar with Harris County and Harris County's labor establishment

and its business establishment, are you not?

A Well, I am---

Q To a degree, at least.

A Well, I would like to claim that I was a lot more familiar with both the labor and the business establishment in Harris County, but---

Q Well, right now---

A Yes, yes, I am aware that they do exist.

Q All right. Now, is it unfair to state that Everett Collier and Mr. Searcy Bracewell of Houston and Harris County have established themselves as foes of the corporate income tax before you, with you, talking to you?

A Now, I would say that Mr. Searcy Bracewell, yes, was retained as a lawyer to lobby against the corporate income tax, but I have got to say that Everett Collier never has asked me how the corporate income tax was coming or whether -- I don't know his paper -- I am not even aware of what position his---

Q He doesn't seem to be interested in that to you?

A He has not discussed it. I don't know. His paper may have taken an editorial position, but I am not aware of any editorial position that the Chronicle has taken as far as corporate income tax.

Q Now, Senroy Bracewell has talked to you about the corporate income tax, hasn't he?

A Yes, he has.

Q He talked to you about it during the period of time that the senatorial map was being redrawn?

A No.

Q Before?

A Are you talking about during the session of the Legislature?

Q I am talking about the period of time preceding the adoption of this map, did Senroy Bracewell ever talk to you about the corporate income tax?

A The corporate income tax battle was fought back during the session of the Legislature. That was some three months prior to the time this bill was being drawn. No, Mr. Bracewell never talked to me about corporate income tax while this bill was being drawn.

Q But at least, it preceded the adoption of this bill?

A You are talking about---

Q The discussion.

A Oh, you are talking about a discussion I had back when the Legislature was writing the tax bill last May, I guess it was, and what was the date that we adopted this bill?

Q It's on there. I don't know.

A I think it's in---

Q Okay. We are talking about May of '71 as opposed to---

A When did we adopt this?

Q October 14th.

A Now you are talking about some five months later.

Q All right. So you are saying there is no relation between the two?

A I am saying that there is no relation between this bill and the corporate income tax. I am saying to you that Mr. Braeswell never had a conversation with me with regard to senatorial redistricting relating it to corporate income tax.

Q Well, isn't it a fact, Mr. Barnes, that if this were drawn to include more conservative members in the Senate, that the corporate income tax would stand a better chance of being defeated; now, isn't that a political fact?

A Well, I have not seen any statistics that say that there are going to be more conservatives elected as a result of this bill, and I would say that there has been criticism in the newspapers of this bill protecting some of the members who are the strong proponents of the corporate income tax. I

would think the criticism that was in the Dallas paper about Senator Henry having a perfect district -- he was one of the number one advocates. I would think Senator Schwartz -- you could go down the list of the people that voted for it. In my mind there was no relationship whatsoever between the corporate income tax and the senatorial redistricting bill, and no discussion with any individual in regard to the Senate lines will be drawn to either pass or not to pass the corporate income tax.

Q And to your knowledge, did -- you say there was no discussion. I suppose you are referring to yourself -- no discussion about that?

A I was not part of any discussion whatsoever.

Q Everett Collier and Searcy Bracewell and Crawford Martin did not hold a discussion that you know of about the corporate income tax?

A Not to my knowledge, and the Attorney General and I never had a discussion about corporate income tax and period. I don't remember discussing corporate income tax ever with the Attorney General.

Q Do you know if Crawford Martin rented an office outside of this office during the period of time this map was being drawn?

A No, I do not.

Q Mr. Barnes, let me shift over to something else. I am going to bring you a map. I am going to ask you to accept my---

MR. GREENBERG: Can we have it marked so we know what we are dealing with?

(The document was marked for identification as Barnes Exhibit No. 1.

MR. BERG: What this is is a map that shows poverty areas and the more than fifty per cent black census tracts. It is marked Barnes No. 1.

MR. LUNA: There is nothing like this in evidence.

MR. McDANIEL: Well, now, wait a minute. That is your assumption, what it shows. I want that very clearly to be reflected in the record.

MR. BERG: Okay. We will be prepared to put that in later on, Sam.

Q (By Mr. Berg) Mr. Barnes, you are familiar with Harris County, Texas, are you not, with its makeup?

A Yes, I am familiar with it, but if you are asking me if I know what income people or really what the color of the skin of the people that live in the various and sundry precincts, if you say Precinct 223, I can't pass that exam.

Q No, but in general, are you familiar with the fact that the core of the city is heavily a ghetto area or heavily a black area, the central city of Harris County?

A Yes, I am generally familiar with the fact that there is a high concentration of black Texans that live in the center part of the City of Houston.

Q Well, that is what we are concerned with, is the way the lines were drawn. It has been perhaps uncritically said that you are primarily responsible for the drawing of this map the way it is drawn. Would you say that you of all the members of the board drew this map?

A No, I wouldn't say that.

Q Was it equally divided among the five members?

A No, I would say that the -- I would say that this map, particularly the lines in the metropolitan areas, are a product of staff work more than the members of the -- and I don't know, I haven't had the benefit of what the other members of this Commission have testified to in the past few days. Has everyone given a deposition but me; am I the last one? But I do know that -- I would say that the lines in the urban areas in the Senate redistricting bill and in the House redistricting bill

are more a result of staff work than they are of any---

Q Let's talk about Harris County, then.

A Okay.

Q I see what you are driving at. What staff members on your staff drew these lines?

A Well, I would say -- now, I can't tell you exactly who drew those lines, but I can tell you that the two people that worked a great deal on my staff on these lines were Robert Spellings and Greg Hoosier, who was the -- and I don't know the -- Johnny Potter and Bob Johnson. I don't who else in the Legislative Council. And Sam, you will have to help me about who from the Attorney General's office did most of the staff work, but I do know the two people on my staff that are on the Senate staff that did most of the work.

Q Well, it is our impression, at least my impression, that this map was done primarily with Mr. Spellings, Mr. Hoosier, and one member of the Attorney General's staff who we have been unable to isolate or pin-point. Would that be a fair statement?

A Well, I don't know about what other parties or what other staff personnel participated in drawing this map. I do know that Mr. Spellings and Mr.

Hooser played a major role in it.

Q And they of course operated under your instruction?

A That is -- well, not necessarily did they do everything they did under my instruction, but yes, they worked for me.

Q All right. If they worked for you, Mr. Barnes, is it safe to assume that you had something to do with instructions on how to draw Harris County?

A Well, I did not tell Mr. Spellings or any member of the staff how to draw the lines, as far as which precinct included which district, I did not give those specific instructions.

Q So were you unconcerned with what precincts---

A No, not that I was not concerned, but I told them to draw the map and then I would look at it after they completed the map that they thought fairly apportioned the senatorial districts in Harris County, and then I would do it. Certainly I had the right to change any precinct line or any -- if I could get two other members of the Commission to vote with me, we could have changed anything we liked.

Q Is it safe to assume, then, you delegated your responsibility in that regard, although you reserved the right to change anything, you delegated the first map, at least, to Hooser and Spellings, told

them to come up with what they thought was fair.

MR. McDANIEL: I am not sure that I will agree with that delegation of responsibility. I am going to ask you to rephrase that question, please, David.

MR. BERG: Well, is that an objection or are you---

MR. McDANIEL: Yes, I don't think it is a fair question.

MR. LUNA: Are you going to overrule the objection?

MR. BERG: Well, I have overruled the objection again.

MR. McDANIEL: Then I will just instruct the witness not to answer the question.

MR. BERG: You are in contempt.

Q (By Mr. Barg) All right. Let's put it -- you are not answering the question?

A I relied on staff work, certainly, but I didn't delegate any of my responsibility because I found out, as Harry Truman said a long time ago, that the buck stops here. It did stop on my desk. I was going to have to live with any lines that I signed my name to, so I am here to take responsibility for the lines. I am not fixing to try to

pass responsibility on to my staff.

Q Well, Mr. Barnes, what did you tell them to do in drawing -- what guidelines did you give them?

A I told them to give Harris County the representation that they were entitled to, as far as not to divide the surplus among several senators. It was a late decision that finally, that Senator Schwartz got what, five thousand people or the Galveston district got five thousand people out of Harris County.

Q So the first guideline pertained to population?

A That's right.

Q Make sure that population was evenly divided?

A That's right, and I was very concerned as to -- that there was a district that had at least the same percentage of black population that the present district that was being represented by a black senator had.

Q Now, that is why we are here. The present district that has been drawn, the present senatorial district that has been drawn, or actually the 11th, the old 11th, is a great deal different from the new 11th district.

A But what is the percentage of black population?

Q Well, that is exactly what I want to ask you. What

do you understand to be the percentage of black population in those districts?

A I understand the percentage of black population to be slightly higher, around one per cent higher than the population in the -- the black population in the district that is now represented by a black senator.

Q Would you have been concerned if that population of blacks in that district had been ten percentage points lower, would it have changed your mind any?

A Well, with my direction I knew that the staff wasn't going to come up with one ten percentage points lower.

Q Would it surprise you to know that there are only thirty-eight per cent blacks in that district now?

A Well, there were less than thirty-eight per cent blacks in the district that Senator Jordan was elected from originally, I was told by my staff and by the Legislative Council.

Q Would it have changed your position any on how to draw those lines if you knew that Barbara Jordan had started with forty-eight per cent black within her district the first time she ran?

A Are you telling me that that is a fact?

Q I believe it to be a fact. Barbara Jordan testified

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Monday, and there is some question about that deposition, but she said she started with forty-eight per cent black and now there is thirty-eight per cent black.

A Well, I was advised by the staff that this district had slightly less than one per cent more black population.

Q Would that have changed your mind if that were the case?

A It would have certainly had some bearing on it.

Q Because then you are cutting out black representation?

A Well, I don't know that you are cutting out black representation. A city councilman was just elected from the City of Houston running city wide, and the percentage of black population in the City of Houston is certainly not any forty-eight per cent.

Q Do you consider -- you seem concerned, though, that if those be the facts, I can't help but note some concern on your part. There must be some basis for that concern, then, if there is a ten point spread.

A Well, I am certainly concerned if the staff made a ten per cent error, which I would certainly like to -- I would certainly like to see the breakdown

on this because---

Q Okay.

A ---that is contrary to---

Q All right. The present setup or the present -- regardless of the differential now in the percentage of blacks, the present setup takes the core city area of Harris County census tracts which you can see better over here around 208 and places it in the same precinct or in the same senatorial district with River Oaks. You are familiar with River Oaks in Houston?

A Yes, I am familiar with River Oaks.

Q Would you agree with me that that is a very opulent, affluent section of Harris County, probably one of the richest sections in the United States?

A Well, I will take your word for that. I know it is a wealthy section.

Q Okay. Lieutenant Governor Barnes, is there any community of interest between the core of the city which is included in the River Oaks senatorial district?

A Well, now---

Q Do they have a community of interest, in your opinion?

A I don't think we can ever draw a bill that puts

everyone that has -- that makes exactly the same amount of money and has exactly the same interest in a district. I think you can argue that minority groups might be better off if they were represented in several different districts than if they were all put in one district, as far as how a member of the Texas Legislature is going to act or not act, as far as legislation concerning them, so there is the philosophical argument that can be made for either position.

Q Well, isn't that, Mr. Barnes, exactly what they have had over the years, representation spread thoughout, not particularly a black for blacks, but they have been represented by people who hold political views far -- entirely different from their own?

A Well, I don't know that in Harris County that that would be true in the Texas Senate. There is one Republican senator that I have some reservations about what kind of job he has done in representing them, but I think -- and I don't know what purpose it serves to discuss personalities here, but I would say Harris County, with Senator Wallace, Senator Jordan, Senator Brooks, and Senator Schwartz, I would say that in my own opinion -- and it is

certainly an opinion -- that the minority groups in Houston in the last session of the Legislature received very fine, outstanding representation.

Q Well, now, in the Senate -- let's talk about the Senate for a second. The way these maps are drawn isn't the black vote sort of evenly divided or diluted among these three -- 15, 11 and 6; isn't the black vote sort of meshed in with more conservative white voters in those three districts?

A Well, I would have to spend some time studying the map to be able to answer that question.

Q But as a general fact, aren't you aware of the fact that the black vote has been diluted in Houston among the white voters in the various senatorial districts?

A No, I am not -- I am not ready to say that I agree with that.

Q Do the blacks now -- is it your position that the blacks have the same voting strength in the senatorial districts as they did before?

A Well, I must confess that if your facts are correct about the ten per cent less in the senatorial district, ten per cent less black representation in the senatorial district, this is a fact that I did not have when I voted on this bill.

MR. BERG: Could we go off the record a minute.

MR. LUNA: Armstrong testified yesterday the same thing.

(Discussion off the record)

MR. IDAR: Are we back on the record?

MR. BERG: Yes.

MR. IDAR: May the record reflect that as we were off the record, Mr. Luna made the comment to Mr. Barnes here that Mr. Armstrong testified to substantially the same thing yesterday, and may I request counsel not to place a matter before the witness as to what other witnesses testified to.

MR. LUNA: Let the record show that was not made after we went off the record, that the statement was made before we went off the record.

MR. RICHARDS: I guess the record will reflect that.

MR. LUNA: And I am also happy to comply with the instructions of my distinguished opposition.

MR. IDAR: I am not seeking to instruct you, Mr. Luna. I am just raising a proper objection to your informing the witness of the deposition.

Q May I resume now?

A Yes, you certainly may, as far as I am concerned.
Q One point that I do want to stress with you: are you aware that the percentage of blacks within Barbara Jordan's senatorial district, no matter what the beginning percentage was -- I may be wrong, but no matter what the percentage of---

MR. LUNA: Excuse me. May I?

MR. BERG: Yes.

MR. LUNA: So that we will understand each other that we don't have any improprieties, I have not understood that these witnesses have been under any rule and that we are not to mention to any witness what some other witness has testified to. Counsel in examining this witness has told him on the record what Senator Jordan and several other people have testified to. Now, are we supposed to have some agreement here that we are operating under? Are we operating under some agreement that none of us are to mention to a witness what anybody else has testified to or only Earl Luna?

MR. BERG: Earl, I just want to get -- ask some questions.

MR. McDANIEL: We have no agreement that I know of, and I might observe that Commissioner

Armstrong was in the room yesterday when we were taking Mr. Hooser's deposition, so we have obviously not observed any such agreement.

LT. GOV. BARNES: Let me say it is not important to me what anybody else testified to. You all take my deposition.

MR. LUNA: The objection indicated that I had said something inappropriate. If anybody thinks it is, I would like to know about it.

MR. IDAR: Well, if I can explain my position, it is customary for counsel in interrogating a witness in a deposition to make reference to testimony that has been adduced to other witnesses. That is when the counsel who is actually interrogating the witness does so. My objection was based on the fact that Mr. Luna is here representing defendants to this lawsuit that are on basically the same side of the issue as Mr. Barnes is and that I think it is inappropriate at the particular moment when Mr. Luna made his remark to advise Mr. Barnes that the testimony in question had been substantially testified to along the same line by Mr. Armstrong yesterday, in view of the fact that Mr. Luna was not the attorney that was in the process of taking the deposition at the time he made his remark, and

I meant nothing offensive toward Mr. Luna or anybody else, just felt that we ought to proceed upon the rule.

MR. CUNNINGHAM: Can't we go off the record for a minute?

(Discussion off the record)

Q (By Mr. Berg) I would like to know, and you can enlighten all of us on this, whether or not Barbara's district increased measurably in percentage of blacks, no matter what the starting percentage was; didn't she have a strong increase in the numbers of blacks and percentage of the blacks in her district during the period of time she was in the Senate?

A Well, I would assume that -- I do remember that Barbara's district gained in population, but now, I don't know how much it gained as far as -- numerically, as far as number of people that came in the district. No one has told me this, but I would assume probably that some of the white population moved out of the core of the city -- I mean if this is true.

Q Right.

A I have read this in the newspaper, not about Houston, but about other large cities, so I really---

Q If that assumption is made then would it be fair to say that less than one per cent increase that you were relying upon in black population did not match proportionately the increase in black population in her district?

A But I thought it very important to look at the percentage of population at the time the black senator was elected, because I mean that is what pleased me, and I think that is what was good to the black community, the percentage of population that elected a black senator.

Q Right. And also the area they were located in would be very important, wouldn't it? You wouldn't make the assumption, for example---

A I think a black senator can represent any area of Harris County, as I think a white senator can represent any area of Harris County.

Q Of course. That is understandable, but what I am saying is if your concern is -- say a forty-two per cent black precinct or black district elected a black senator, and that is what you were concerned with, that figure, starting point, Barbara Jordan first time out in the race. Isn't your concern also then that forty-two per cent be maintained at least at the same level and not be placed in an

area where, say, whites voted heavier than where they had before?

A Well, I was hopeful that the lines could be drawn in which that there would be a percentage of black population in Harris County comparable to the percentage of black population within the framework of the district that elected the black senator.

Q Did Bob Armstrong come to you at some point and voice a complaint about the senatorial districts in relation to the racial problem?

A Well, it may have been at the time that we adopted the map or at the time the Commission met -- I am trying to remember -- but there was a discussion about moving a line, and I cannot tell you -- and we can find out from Spellings and Hooser -- but Bob did want to move a line, but I think it was -- maybe it was the day that we were adopting the map.

Q You don't remember his specific complaint?

A No. I think his concern -- it concerned, it was concerning -- I don't know whether it concerned the black district or one of the other districts. It may have been concerning the black district.

MR. BERG: Can you excuse me one moment?

(Discussion off the record)

Q Did Senator Jim Wallace ever come to see you about

the senatorial district; do you remember that?

A Yes, I talked to Senator Wallace. I talked to every member of the Senate.

Q All right. Now, what did Senator Wallace have to say to you?

A Well, he was -- Senator Wallace was greatly concerned about the presentation that had been made by the Houston Chamber of Commerce or about the map that was in the orange folder, whoever got it to the committee, because it dramatically changed his district. I have forgotten now, but he had something like eighty or maybe eighty-five per cent new population, people that he had not represented before.

Q What were your -- I am going to shift off this for a moment. I would like to know what your major concerns were, not necessarily the guidelines you gave Spellings and Hocser, but what were your major concerns in drawing these lines other than that they be fair and everybody get their fair representation?

A Fairness and the constitutionality. I had had all the redistricting I wanted or ever want.

Q Constitutionality implies that they -- certain basic fundamental guidelines exist, doesn't it; I

mean for instance, were you concerned that each area be compact?

A Yes, I think compactness was a factor that certainly was in my mind. I mean to what degree of compactness -- I mean that is always a matter of opinion -- and how to define the cities. There were people that thought that cities ought to be divided in pie shapes. There were those that thought you ought to start at the core of the city and redistrict out, and this is the reason that this district ended up like this.

Q But what did you think, what did you think?

A Oh, I didn't have -- if you are asking me if I had a plan in my mind that I said, now, this is the way that it should be done and this is right---

Q No, no. What I am saying is, why did you approve this; what was it appealed to you about this map with these districts in it; what guidelines or what criterion did they fulfill for you in your mind?

A Well, I think that Harris County was given their complete representation. There was not a big division of a large part of the county into several other rural districts, and we did start -- these districts do start in the heart of the city and

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work out. I felt like that as far as community of interest that the suburban area in the district that almost goes around Harris County, that that was best served. This voting precinct is certainly not compact with that one, but neither is Bell County with Refugio County.

Q Are you familiar with the makeup of the -- that there is labor and business and there is the clan out in this area? I mean just incredible -- incredibly diverse political viewpoints represented by district number 13?

MR. McDANIEL: The what out in this area?

A The clan.

Q The clan.

A I have got to say that I didn't know the clan was---

MR. GREENBERG: What clan?

MR. McDANIEL: What clan are we talking about?

Q Well, let me state that another way. Are you aware of the diverse viewpoints out in this area of -- in number 13?

A Oh, I was certain that there were some diverse viewpoints. Let me say this. There are some diverse viewpoints in a lot of the senatorial districts. In my home senatorial district, for

instance, there are very diverse views.

Q How many times did you meet in Crawford Martin's temporary office with Mr. Spellings and Mr. Hooser Crawford Martin and Everett Collier about this?

A Now, wait a minute. Mr. Martin's temporary office. I never met with Crawford Martin in any temporary office. What temporary office are you talking about?

Q I am asking you if you were aware of perhaps a temporary office rented by anyone for the purpose of discussing this matter in the presence of Crawford Martin, yourself, Hooser, Everett Collier, Spellings, any combination of those.

A I have no knowledge of any temporary office that the Attorney General has rented.

Q Okay.

A I mean as far as -- I would say -- I don't know where Hooser and Spellings were all the time, but they worked many long hours, but most of the times that I knew of their working, they were working in the Lieutenant Governor's office.

Q Where were you---

MR. McDANIEL: Might I say for the sake of the record that if the Attorney General has any secret office, certain members of his administrative

staff know absolutely nothing about it either.

A We met in the Attorney General's -- I came over to the Attorney General's office.

Q In the hours prior to the signing of this bill, forty-eight hours prior to the signing of this bill, can you kind of retrace your steps for us?

A No, I really can't.

Q Were you in Austin, do you remember?

A No. We can go back and get my calendar from my staff, but---

Q Could we do that; could you make that available to us?

A Yes, I will be happy to.

MR. BERG: Sam, any objections?

MR. McDANIEL: No, I have no objection.

A I really -- and I am not trying to evade your question, but if you asked me to go back one week from today in the past twenty-four hours and track my steps, that would be difficult for me today.

I was in San Antonio the day, though, that they met one time, and I got all that bad publicity for not being there when I didn't know they were going to meet, and I was already down there fixing to make my speech. I do remember that.

Q Are you familiar with the new United States

Congressional seat that was drawn in Harris County?

A Yes, I am.

Q Did you ever talk to Barbara Jordan about that particular seat?

A Yes, I suppose I talked to Barbara about it. I mean I talked to all the members of the redistricting committee, and she was vice-chairman of the committee. I talked to them about congressional redistricting. If you are asking me if I ever said, "Barbara, does this new district go here, here, here, here?" no. If you are asking me if I had a precinct by precinct discussion with Barbara Jordan over than congressional district, no, I did not have.

Q You know, it just occurred to me what I implied by asking a question about that clan. I am very sorry. I didn't mean to imply you knew about the clan.

A I was just going to rely on the fact that you knew what the clan was doing because I never -- I didn't know that they were in Harris County and don't have any communication with them.

Q When this was submitted to Bob Armstrong, when this map, the final map, senatorial map, was submitted to Bob Armstrong, had he been consulted in the drawing of these lines, to your knowledge?

A I really don't know how much time Bob spent with the Attorney General's staff and my staff that was drawing lines. Let me make it very clear. I don't know what the other people have testified to here, but as far as all members of the Commission had the right to go off and draw all the maps they wanted to and had their right to have their staff there; it was an informal type approach to this. We had twenty -- what did we have, twenty-three days, Sam? I forget.

MR. McDANIEL: Yes.

A And my objective was to get the job done in both bills as fair as possible, and I don't know -- I know Bob Armstrong was consulted. I saw Bob in my office many times meeting -- well, not many times. I saw him in my office several times meeting back with Spellings, and he and I would visit about it briefly, but I don't know how much time Bob Armstrong spent on this. You will have to ask him.

Q All right. The geographic boundaries represented by the new senatorial districts, do they seem fair to you, naturally drawn; was this a consideration of yours that---

A The geographic boundaries of the new senatorial

districts?

Q Yes. Does it make geographic sense in terms of bayous and highways and that sort of thing?

A Well, I really cannot say that I have taken the senatorial district map and gone down each division line to see about streets and bayous. I know in the House redistricting bill that in South Texas we made a mistake, I think, in dividing a town right down main street, and two brothers came to see me, very angry. One of them lives on one side of the street and the other one lives on the other, and they are in different legislative districts now, very upset about this. This is going to happen when you try to---

Q Was this a consideration of yours, the geographic boundaries you were drawing?

A Well, yes, it was a -- but I don't think a geographic boundary was one of the highest considerations or had the highest---

Q Priority?

A ---priority.

Q What was the highest priority in your mind?

A Getting a map drawn that could get three votes of the Commission that was as fair as possible to the eleven million people in Texas that disrupted the

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political climate as little as it could be in 1971. In twenty-three days one of the great problems I had was just returning the phone calls and talking to all the people that wanted to talk to me about it. I was very discouraged when the House did not draw a constitutional bill and when the Senate did not in the time allocated draw its own senatorial redistricting bill. I was extremely disappointed with the Governor of Texas when he would not call a special session to the purpose of senatorial House redistricting, as I thought he should have done when the Legislature did not complete senatorial redistricting.

Q How, so then I can take it geographic boundaries were sort of at the bottom of the list of priorities?

A I don't know whether you can get it, put it at the bottom, but---

Q Okay. At least it did not rank at the top. We established that. And whatever did rank at the top, Lieutenant Governor, you are convinced -- is it your position now that the black vote was or was not diluted by this map?

A No, I don't think the black vote was diluted.

Q Okay. Is it your position that there will be representation of blacks, fair representation of

blacks on the basis of the coming elections although you can't predict them?

A Well, I mean I certainly hope that there is fair representation of blacks and anyone else, no matter who wins, but you are asking me to speculate what is going to happen on an election in Harris County, and I am willing to speculate on what is going to happen on one election in Texas, but outside of that, that is as far as I am going to speculate in 1972.

MR. BERG: That's all I have.

Questions by Mr. Eason:

Q I am Nathan Eason from San Antonio. I represent Mr. Van Archer and others who have attacked the senatorial and legislative redistricting bill. Mr. Van Archer is the chairman of the Bexar County Republicans. Now, I would like to explore a little bit further this area whereby Mr. Hooser and Mr. Spellings, possibly in conjunction with others, drew up the lines, we will say for Harris County -- that is what you were discussing. Now, for whom was Mr. Spellings working?

A He was working for the Lieutenant Governor's office.

Q And for whom was Mr. Hooser working?

A Mr. Hooser is a young man that worked for the Senate committee on congressional and legislative reapportionment.

Q Well, of course, that work, I suppose, would have ceased prior to the adoption of these plans, however.

A Yes, that's true.

Q So---

A Well, that's assuming that -- no, it didn't really cease because no one really knew what -- there was a suit that was filed or threat of suit to test the constitutionality of these five men meeting, and there was always---

Q The possibility---

A ---the possibility of a special session any time, and the decision was made by the chairman of the redistricting commission -- committee. Senator Word asked to retain Mr. Hooser until some form of disposition had been made so far as legislative reapportionment was concerned.

Q But Mr. Word,-- correct me if I am wrong. Mr. Word, of course, was not present and working over Mr. Hooser at this -- after the -- at the time that the final plans were being drafted?

A That is correct, as far as the House and Senate

are concerned, yes.

Q Yes, sir. Now, under whose jurisdiction, control and authority was Mr. Hooser working at this time?

A Well, I would assume that as far as who was signing his check, he was on the payroll of the Texas Senate.

Q Yes, sir. But who was giving him directions -- and I understand you to say, and you correct me if I am wrong, that he was working for you, at least under your---

A Well, he was working under the supervision of Mr. Spellings, and thereby working for me. I had most of my conversation about redistricting with Mr. Spellings and not with Mr. Hooser. He was present part of the time, but---

Q In other words, Mr. Hooser, then, as I understand it, would have been under Mr. Spellings.

A That's true.

Q And Mr. Spellings was working for you.

A That's true.

Q Now, again, Governor Barnes, on these Harris County lines for the senatorial redistricting -- correct me again if I am wrong -- did you -- we won't use that word delegate. Did you instruct or did you, under your supervision and control, did

Mr. Spellings and Mr. Hooser come up with the lines that ultimately resulted in the Harris County senatorial redistricting?

A Well, now, as far as who drew this specific line right here, I cannot answer that question. I don't know whether a member of the Attorney General's staff or whether Mr. Hooser or Mr. Spellings. As far as who made that exact determination, I cannot answer that question.

Q All right. When the plan that is given you here now and the one that was accepted by the senatorial redistricting committee, when you first saw it, was it presented to you by Mr. Spellings and Mr. Hooser?

A It was presented to me -- I am not certain Mr. Hooser was there. He may have been. It was presented to me by Mr. Spellings.

Q And then you do not know of your own knowledge who actually drew in the lines?

A Well, I assume that -- I assume that Mr. Spellings and whomever in the Attorney General's office that was there helping draw the lines either drew the lines or supervised the drawing of the lines. The Legislative Council may have been involved in this also.

Q You mean Mr. Johnson and his office?
A Yes.
Q Possibly you answered this. I don't recall. Do you know whom in the Attorney General's office was doing the actual drafting of the lines?
A No, but if Mr. McDaniel can help me on it, there were several different assistant Attorneys General involved. Sam, could you answer this question?

MR. McDANIEL: Yes, I would be happy to. Mr. Martin has already answered it in his deposition. Mr. Louis Jones and Mr. Cam Lowry of our office did most of our map drawing, and I, along with Mr. Pat Cain and Mr. Albert Walker, had some contact with the various other staffs working on the project. I might even add I tried my hand at drawing maps myself and didn't get very far and quit.

Q Do you know of your own knowledge, Mr. Barnes, who in the Attorney General's office was working closely in conjunction with Mr. Spellings, if you know? If you don't, why---
A No, I really -- it is my understanding, and if my memory serves me correct, that there were five or six assistant Attorney Generals that were involved in the drawing of the lines and working on the

redistricting. I talked to Mr. McDaniel and Mr. Pat Bailey and Mr. Albert Walker. I believe that I was in the office when Mr. Jones was there, and a couple of the fellows I didn't even know. I can't tell you who was present when these lines were drawn. I do not know.

Q Yes, sir. Now, I believe you further stated that you of course did have -- the buck stops here.

A Yes, sir.

Q You did have the final say when---

A Well, I was one of the five.

Q Well, when your employee, Mr. Spellings brought it to you for approval, you did have the final say in regard to that, is that correct, and I don't mean not -- naturally, the other members of the Board had the right to, but I mean when Mr. Spellings presented the draft to you, as far as your office was concerned, you did have the final say-so---

A That's correct.

Q ---as to whether or not this.

A That's correct.

Q Do you recall whether or not you made any changes in the final draft as presented to you in the Harris County senatorial plan?

A To the best of my knowledge, I did not.
Q Do you recall whether or not you made any changes in any of the senatorial redistricting plan as proposed to you by Mr. Spellings?
A As far as -- this took place over a period of time, and there were individual areas of the state where that Mr. Spellings would bring a plan to me and say, "What do you think of this?" and I would look at it -- and this was primarily in the rural areas, because it's very difficult for me, without any more knowledge than I had of exactly where these lines go in these cities, to be able to spend a great deal of time getting involved details. During the week or ten-day period we were working on this I looked at several different plans. As far as the final plan, I don't recall of any changes that I made in the plan that was adopted at the time Mr. Spellings presented it to me.
Q Can you tell me approximately how long before -- well, let's see. I believe the senatorial was approved on the 15th, is that correct, 15th of October?

MR. LUNA: Thirteenth.

Q Well, which was first, senatorial?
A Senatorial.

Q That would have been the 13th of October. Can you approximate for me if you can when you first saw the plan that was adopted by the Board on October 15, 1971, senatorial.

A Only a couple of days prior to the time. I can't give you hour and day, but it was not very---

Q That's all I want. In other words, there was approximately two days lapse between the time you saw the finalized plan and the time---

A Maybe not a complete two days. Maybe thirty-six hours.

Q Would the same thing be true of the legislative plan?

A Yes, not any longer than that as far as the legislative plan was concerned, certainly.

Q Do you recall whether or not you made any changes in the legislative plan as approved by the Board after the final draft of the plan was presented to you within thirty-six or forty-eight hours prior to approval?

A Not to my knowledge. I know that the House members up until the very -- well, as a matter of fact, I think that Speaker Nutcher probably had some amendments. I don't think he ever actually offered the amendments, or maybe he did -- I don't

recall. I know he had some. There were -- there was a large number of House members that were trying to get the House -- the plan changed right up to the very last minute before we voted.

Q Did you in your considerations and deliberations in drafting and suggestions, did you familiarize yourself with the legality and the constitutionality of the various plans and what the law dictates, both as to the state and as to the Supreme Court of the United States, or did you rely chiefly on Mr. Martin, who was of course the chief legal officer of this state, and on the Board?

A Well, I am a layman and not a lawyer.

Q Yes.

A And certainly by a process of osmosis you learn some of the aspects of what constitutes constitutionality or not, but I would say that I relied on the Attorney General of Texas as chairman of the Commission and as the state's chief legal officer to advise me of what was and what was not constitutional in the Attorney General's or in the state's eyes.

Q Would it be fair to say that you -- well, are you aware of the requirements of compactness and contiguity?

A Yes, I am aware of them.

Q And you are aware of the requirements of community of interest? Now I realize, as you testified before -- and I am not disagreeing with you -- that this is a hard thing to define---

A Yes, sir.

Q ---community of interest, but you were aware that this was a requirement?

A Yes, and the Attorney General of Texas in looking at the plan that was adopted, said that in his opinion, it met the requirements, all the constitutional requirements that the federal courts had laid down and that the state courts -- as you remember the state courts made our House redistricting particularly difficult when they said any time that a county line had to be crossed, that it was crossed, that there had to be justification, and this caused some difficult problems in the rural areas.

Q Of course, you missed this one meeting. As you say, you had a prior engagement for a speaking commitment in San Antonio, I believe. Do you think that this -- your missing this one meeting had any effect whatsoever on your decision in approving or not approving either plan?

A No, I do not. I recall at the meeting that I missed the only business that was taken up at that meeting was to hear Mrs. Milburn testify, but I could stand corrected. They may have heard some other witnesses, but it was not a long meeting.

Q This may be in the area of conjecture, but had there been a plan presented at that time that would have been contrary to the finalized plan of either the House or the Senate, could your vote have been differently at that time? Let me be a little more specific. Say single member districts for all metropolitan areas.

A Well, first of all, let me say that I have been on record for single member districts since 1963, and I would prefer that the -- and like to see Texas apportioned into a hundred and fifty single member districts and every member of the Commission knew my views on this.

Q Did you then or do you now have an opinion concerning the fact that Harris County is in single member districts and other metropolitan areas in Texas are not; do you think that this substantially affects the rights of Dallas County, the voting rights of the populace of Dallas County, Tarrant,

Bexar, et cetera?

A I feel, as the Attorney General has advised me on numerous occasions, that both multi-member districts at large and individual member districts meet the requirements of constitutionality laid down by the federal courts.

Q I believe that the federal courts do say, as you have indicated, that the fact that you have multi-member districts do not per se create an unconstitutional situation, but there are other factors that are involved.

A I believe a federal court had ruled on a case, though, where our last redistricting bill divided Harris County and let the others run at large, and that bill was upheld as constitutional.

Q I believe that you used the words previously you considered in your deliberations fairness and constitutionality, and I think we have established by this that you were resorting -- well, of course, to your knowledge of the decisions of the courts, of both the state and the federal courts, and also the recommendations coming to you from the Attorney General concerning the constitutionality, since you have expressed and it has been publicized what your opinion is in regard to single member districts,

with this predicate in mind, do you feel that the plans that were adopted -- the plan relative to single member districts in Harris County and multi-member districts in the other metropolitan areas are fair?

A Yes, I think they are fair, and I would like to -- I said I would like to see the Legislature divide -- in particular, the House of Representatives elected by the people divide themselves into a hundred and fifty districts. I think they can probably do a better job than a five-man commission in twenty-three days drawing a hundred and fifty individual member districts. We had already divided Harris County, and I was the first one to become insistent, and I insisted, since Harris County was already divided and we weren't going back to a representation at large in Harris County, why not go ahead and make the step in Harris County and divide Harris County into individual member districts, which we ultimately did.

Q Now, you have used the word "time." Do you feel that the time element that was involved in this thing possibly affected the ultimate outcome of the redistricting plan?

A I can't say that the time factor was the absolute

criterion that caused the Board to vote as it did if you are speaking about individual member districts. I think that the votes on the Board were either three to two or two, two, and one. The Attorney General never really positively said exactly what he would do. I think that the Commission was trying to do what they thought best represented the interest of the people, at least they heard -- that we heard from. We heard from a lot of people. In Harris County it was not -- there was more support for individual member districts.

In Bexar County and in Dallas County and in Tarrant County we did not receive any real enthusiasm for individual member districts if the members of the Board were receiving basically the same type of contacts that I was, and I am not too sure, and as far as the time standpoint, I am not too sure a five-man commission made up of state officials are the ones to divide this state into a hundred and fifty member districts from the standpoint of doing it in twenty-three days. That is a difficult task. I am not saying that the time kept us from doing it in saying -- saying that is the reason they weren't divided. I think they

were trying to -- the Commission tried to represent what they thought the majority of the people wanted.

Q You feel if you had more time, you could have worked out a more -- strike "more" -- a fairer and better plan, either for the Senate or for the House?

A No, I couldn't testify to that. You know, it all depends on which bill you like best when you are talking about fairness. I mean, you know, we could bring fifty House members up here, and we could put six different plans on the board, and they would probably -- each plan get ten votes, because people look at it from that standpoint. You could get citizens from Dallas, Fort Worth, Houston, and San Antonio to come and look at plans, and they are going to look at their particular area, and we have a tendency to confine ourselves to our own particular area.

Maybe more time would have presented a fairer plan, but I feel both the House bill and the Senate bill are fair plans, and I was advised by the Attorney General of Texas, on whose legal advice that I had to rely, that both of these plans are constitutional.

But again let me say I would have rather for the House and the Senate, the thirty-one elected

senators and the hundred and fifty House members have done the redistricting, and I felt like the federal court if -- should have let the Governor of Texas or directed the Governor of Texas to call a special session. That is what I would have preferred.

Q But you feel in your own mind, then, that this is as fair a plan as you could have drawn within the time allotted?

A Yes, I do.

Q And you further feel in your own mind that had you had more time, you could not have drawn a fairer plan?

A Well, again, that is a speculative question. I am not saying that we could not, I am not saying that you couldn't improve on any bill that is drawn if you just worked on it over a longer period of time. Certainly I think we might have -- in the South Texas area we might have worked out something where we wouldn't have split that one town right down main street if we had more time. I feel bad about that.

Q Did you in any of your correspondence or your working on this thing, were you ever presented a plan whereby Bexar County was divided into single

member districts that you recall?

A I don't recall being presented a plan that divided Bexar County into individual member districts, but I could stand corrected on that, but I really don't -- Johnny Alanis, he did testify the day I was not there, and I don't know whether Johnny Alanis had a plan that he presented that divided -- Joe Bernal testified for individual member districts, but I don't believe Senator Bernal presented a plan that divided Bexar County into individual member districts, but like I said, I could stand corrected on that, but to my knowledge, I don't believe I ever received a plan dividing Bexar County into individual member districts, Bexar or Tarrant County, but there was a college student at Arlington right at the last presented a plan, I think maybe that divided the whole state. Am I not right in that?

Q Specifically, let me ask you this. Were you ever presented a plan that you recall by Van Archer, one of the plaintiffs in the lawsuit which I have filed, dividing Bexar County into single member districts?

A I do not know. I will---

Q You don't recall?

A No, I don't recall.

Q You don't recall General Martin ever presenting

such a thing to you or mentioning such a thing to you?

A No, but he could have mentioned it and me not remember it.

Q Could he have shown you the plan and you not remember it?

A Yes, he could have, but I just don't believe that he did present a plan to me, but he could -- you have got to understand, I suppose, that certainly every member of the Legislature that came to Austin and talked to us had a plan that -- it may have been just for his own district; some may have been state wide. I looked at a lot of maps. I just don't recall.

Q Do you recall receiving any information, correspondence, telegrams, witnesses or whatever, on behalf of Bexar County, whereby they wanted or desired multi-member districts?

A Yes.

Q In the Legislature?

A Yes, I received some correspondence to that effect and I know that I received -- several of the incumbent House members, I believe appeared before the Committee for either -- and if I am not mistaken, some citizens from San Antonio publicly testified --

I am not certain, but we did have a lot of people contact us from Bexar County, as far as at-large representation.

Q And of these would have been the incumbent members of the Legislature?

A Oh, no, and citizens too.

Q Well, I mean you did -- I am trying to go back on your testimony. That would have included incumbent members.

A Yes, yes. I think probably, if my memory serves me correctly -- and we will check the records of the Committee. I think Frank Lombardino probably testified representing nine of the ten, I believe he said he was speaking for, in that large representation.

Q But they were the then legislators from Bexar County, is that right?

A That's true.

Q Do you recall any of the interested citizens other than these that contacted you in regard to this?

A No, but there were people that contacted -- and if I am not mistaken, I think perhaps one or both of the San Antonio newspapers wrote editorials -- I believe the San Antonio Express wrote an editorial for at-large representation and said if the

Legislature were to be divided into a hundred and fifty districts, that the legislators themselves should do it and this Redistricting Commission should wait and let the Legislature do that itself.

Q But you do not recall any interested citizens---

A If you are wanting names and dates, I cannot. I don't.

Q It is your opinion, as I understand, you think that it would be best, then, that they have single member districts, but based upon -- I am just trying to wrap up.

A Yes.

Q You correct me if I am wrong in my analysis. But that relying on General Martin for the legality of it and the constitutionality of it, that you do think that the plan that you devised is as good as could have been done by the Board?

A That's right, but let me again say that if I were in a position to recommend what the Legislature should do---

Q That they themselves---

A ---that I would recommend that they themselves divide themselves into individual member districts.

Q Did you in your perusal of, acceptance of, and the adoption of the two plans, take into consideration

the facts that we have discussed, fairness, of course constitutionality, compactness and contiguity, common interest, community of interest into various senatorial -- well, let's say senatorial districts as adopted by the Board.

A Yes, sir, we tried to the best of our ability to do that.

Q Mr. Barnes, I am going to hand you the Texas Senate Districts As Enacted October 15, 1971. This is the same memorandum from which -- that you examined regarding Harris County -- and show it to you and point out with particularity senatorial district 21 in the extreme southern and southwestern portion of Texas. Now, this is the plan that was adopted on October 15, I believe, 1971, setting up the senatorial districts. Is this correct?

A Yes.

Q Now, with specifically senatorial district 21 in mind, do you think that that meets the test of contiguity and compactness?

A Yes, sir, I do.

Q Do you think it meets the test of community of interest?

A Yes, sir, I do. I know that the argument should be -- could be argued that what does people living

in San Antonio have an interest with Starr and Zavala County, for instance, but San Antonio has enough for what, two and one-half senators. The same argument could be made about what do people have in common with people from Mills County if you went to the north or Austin County if you went to the east or Jackson County if you went to the south instead of going to the southwest. Texas is a diverse state, and when you start trying -- and when you completely adhere to the one man, one vote decision, there is going to be some districts -- as a matter of fact, an argument could be made, what does Midland County have in common with Kinney County.

Q I know -- I will ask you this question, but you are familiar with Bexar County. Well, let me ask you the question.

A Okay.

Q Are you familiar with the areas of Alamo Heights and Terrell Hills in San Antonio?

A Yes. I am not completely familiar, but yes, familiar enough---

Q I don't mean street by street, Governor.

A Yes, sir. I mean if you are asking me if I know they are in the 21st district, yes, I do.

Q Are you also familiar with the voting records and -- of these districts?

A I know that they are conservative areas of San Antonio.

Q And rather heavily populated by Republicans; would this be correct?

A I really think of the people of Alamo Heights and Terrell Hills as being independent voters.

Q Well, would it surprise you to know that the -- would you be surprised if I told you that they have voted traditionally -- they do. I am going to agree with you on their independent voter, but historically, that they are heavily populated Republican areas. This wouldn't surprise you, would it?

A Well, I have always been gratified that I have been able to carry those areas, and I have got to say that the only races I have really made an in-depth study have been Ben Barnes's races, but I know they are independent voters, and yes, I know in your city elections they vote conservative. I have not really looked to see how they -- I would assume that those areas have voted in state races and national races, probably supported the Republican nominee for president more than the Democratic

nominee if that is the race we are going to use as a criterion.

Q Well, let's be a little more specific than that. Do you know that they have a Republican JP out there?

A No, I didn't know that.

Q Do you know that they have a Republican county commissioner?

A Yes, I did know that Mr. Vaughn---

Q Do you know Bob Strickland?

A That used to serve in the House?

Q Yes.

A Mr. Bob Strickland?

Q Yes.

A Yes, I do know him.

Q He is Justice of the Peace out there; he is a Republican.

A I didn't know that. I knew him when he was a Democrat.

Q Yes, sir. Well, that is one of the advantages of our democratic system of government is that we do have the right to choose our parties.

A That's true, and thank God for it.

Q Well, I am sure that view would be shared by people from the Republican Party and Independents.

A Well, I didn't claim he was just on our side. Don't misunderstand me.

Q Let me ask you this. Do you know of any -- were you presented with any plan whereby District 21 would come into the south portion of Bexar County rather than looping around? This is Senator Bernal's district and Senator Kothmann's district, is this correct?

A Yes, they represent those districts now.

Q And of course, I am sure they were both interested in the senatorial redistricting plan.

A As were the other twenty-nine members of the Senate.

Q Surely. This is what we might call subjective interest, is that correct, as opposed to objective?

A Well, I would not be quick to place my colleagues in the Senate in a complete subjective mood rather than objective mood, but I would say that yes, every incumbent had somewhat of a personal---

Q Nor would I, Governor. I certainly do not want to give that impression. But let's say for instance they had a more personal interest---

A I would say yes.

Q ---in the division of the districts than, say, John Q. Citizen.

A Yes.

Q All right. Do you know of any reason, or did you see a plan whereby senatorial District 21 just simply came in from the south, which would be possibly more compact and contiguous than this?

A I think that the senatorial redistricting committee in the Senate, if I am not mistaken -- and I don't know exactly how the lines were drawn, but I think they had a plan in the regular session of the Legislature that was never adopted. I don't know whether it ever really came out of committee exactly like that, but I did see a plan which the southern part of Bexar County was lumped off in with these counties.

Q Rather than making this -- I don't want to use any offensive words, but rather than going around---

A Well, let me remind you that I think the staff of the committee---

Q Now, are we talking about the senatorial committee?

A No, I am talking about the staff of this Commission. I am talking about Mr. Spellings, Mr. Hooser, General Martin, people that -- I am talking about in senatorial redistricting.

Q All right.

A They made the decision to start in the inner core of the city and come out, and this loop, as you are

calling it or what I said -- I don't recall exactly how we described it -- that is exactly the same approach that was used in Harris County also.

Q But of course, in Harris County it didn't go way beyond county lines did it; I mean it was a horse-shoe effect.

A No, no, and I hope that Bexar County continues to grow and someday that you all won't have to go outside Bexar County to be entitled to three senators.

Q Would you have an opinion as to whether or not there would be -- of course, we understand while these two towns may be incorporated towns or what we may call bedroom suburbs, of course the people in Terrell Hills and Alamo Heights basically work or have their professions, their employment and so forth in the City of San Antonio, is this correct?

A Well, I am just going to have to--

Q Well, do you know of any businesses or enterprises?

A No. I know it's a residential area.

Q Do you think now in your own mind that there is a community of interest between these people with the voting records that we have discussed, with the business enterprises and interests that they have, do they have a community of interest with the people

from Duval, Jim Hogg, and Starr counties?

A Well, I would say that they have as much interest with the people from Duval and Jim Wells and Zapata as the people in this part of the county. I mean I don't see the difference between saying a person lives in this part of the county has less a community of interest with these counties or more of a community of interest than any other citizen living in Bexar County.

Q Well, let me ask you this. Did you or any member of your staff or the people that worked on this, as far as you know, consider the voting background or the community of interest or the type of work, income and so forth of the people from south and southwest Bexar County, as opposed to those from Terrell Hills and Alamo Heights--

A No--

Q --and this area that we have already described as being very conservative, did you compare those two things?

A No, I don't -- I mean I didn't. I can't speak for other members of the Commission, but I--

Q But as far as you know, they didn't.

A As far as I know.

Q Nor did Mr. Spellings or Mr. Hooser?

A Not to my knowledge. I would think that Mr. Spellings and Mr. Hooser didn't compare -- did not take the economic level of the income in any of these senatorial districts under consideration.

Q Well, I just mentioned that as one of several criteria.

A Yes.

Q You will of course agree that the bottom part of the county is more contiguous and compact with the balance of senatorial District 21 than the northeast portion; is this correct? Well, all you have to do here, Governor, is to -- it is closer from this point down here than it is to this point, isn't it?

A Well, if you are saying that it is closer from right here to right here than it is from right here to right here, yes, I would.

Q All right. This is what compact means, isn't it?

A Well, that is part of what compact means.

Q Well, you tell me what compact means.

A Well, I tell you, compact, as far as a federal court definition, I relied on the Attorney General of Texas to tell me whether that was compact, if that meant the Supreme Court's definition of compact, and he said it did. As a layman I cannot---

Q I want to know your -- I want to know your definition of the word compact. Now, you know what--

MR. LUCK: We object to going into that question because it is not material what the witness's definition of compactness is. The rule we are talking about here is the United States Supreme Court definition of compactness, and the witness has testified that he relied on lawyers to interpret that for him.

MR. McDANIEL: I am not sure the Supreme Court of the United States has defined that word definitively myself.

MR. EASON: Exactly. I don't think it has been defined.

MR. McDANIEL: It is a meaningless generality, really.

MR. EASON: Well, is there anything objectionable to the witness answering? Now, he has used his best judgment in this, relied on the Attorney General for the law. I think that the word compact is not necessarily a legal word, but a factual word. I would like to know in his best judgment, whether or not this area is more compact or whether it isn't, and if not, what his definition of compact is.

MR. McDANIEL: You are asking him, then, I take it, in accord with your question, the compactness of the district in terms of the ordinary meaning of the word, then, completely aside from any legal implications that the word compact might have in the context the Supreme Court uses it, is that correct?

Q (By Mr. Eason) My question is what does the word compact mean to him, that simple, and I know of no -- Mr. Barnes is a learned, intelligent man.

A I am not trying to evade your question, counsel. I am just trying to determine in my mind what compact does mean to me.

Q Well, that is the question.

MR. CURRY: In relationship to what?

MR. EASON: Just the word compact. I started with the other end. We didn't get an answer to that. Now I want to know what compact means.

A Well, in relation to this bill, it means putting geographic areas of Texas that are in the geographic areas of the state as close together as possible in senatorial districts.

Q Question: To use a figure -- this isn't accurate, but a hundred thousand, a hundred and ten thousand

or whatever portion of Bexar County was taken from the south part of the county plus the northeast part of the city, could this area, whether this worked out -- I realize that any time you take it from one area, you have got to put it in another, you have to make this thing come out by population.

A That's right.

Q And I realize the burdens that you have. Question: Whether or not this senatorial district, disregarding all others, would have been more compact, had you come straight south from the biggest portion of the district into Bexar County, rather than looping around and coming in from this side.

A Well, I think this right here, these people are closer to Maverick County than these people over here would be if you are talking about -- I mean what point in the district are you going to pick out?

Q I will ask you to put your pen where the approximate geographic center of the district is.

A I will be happy to do this and let the record reflect this is just a matter of judgment on my part. I would say that it is probably---

Q Somewhere around---

A ---around Dimmitt or LaSalle right in there.

Q LaSalle. All right. That is close enough, is it? I want your answer, but are we agreeing on this. It would be somewhere around Dimmitt or LaSalle, correct?

A Yes.

Q All right. Had it gone into the southern portion of Bexar County from the central geographic portion of the senatorial district, would it have been more compact than it is as drawn? Now, disregarding all these other things, just using the word compact. This isn't the sole criterion?

A Well, yes, but also I think in my definition of compact, to do it that way, then the 28th and 19th districts might not have been as compact then.

Q 26th?

A I mean -- okay -- 26th.

MR. McDANIEL: Off the record for just a second.

(Discussion off the record)

A But, counsel, if you are asking me if we took and tried to determine the geographic center of every district and tried to measure and make certain that any division of any urban area, we took part of the urban area that would be closest to the geographic center of the district, we did not nor

did the Attorney General direct me that we had to do that to meet his criterion and his definition of compactness.

Q All right. I won't disagree with that. My point is, though, was there any particular reason in your mind why you did not make it more compact, which you stated that it would have been, had you gone straight into 19, why then did you loop around 18 and 24, was it to preserve -- I believe we have used the word subjective interests of the incumbent senators?

A No.

Q Well, state if you know, why it was drawn around the two present ones and looped the city.

A Well, I can't tell you why that that line was drawn exactly like that, because I didn't draw that line, but as in Harris County, they start from the core of the city and work out, and this was the criterion that the staff told me they used in drawing these lines.

Q Well, now, I believe that we have agreed that this isn't the most compact that you could have made.

A Well, but I have not agreed that there is a great degree of difference between compactness of -- of how you are suggesting the lines be drawn and how

they are drawn.

Q Well, no, a few miles possibly.

A I mean you are talking about — you are only talking about a matter of a very few miles.

Q Yes, sir.

A Or a matter of blocks, maybe.

Q No. I believe from the southern portion to the northern portion of Bexar County would be quite a few miles, wouldn't you?

A Well, that's true, but I think your---

Q Well, this is just one criterion. I will pass that on. Now, did you put any study into the community of interest between the people of northeastern Bexar County and the balance of senatorial District 21, as compared to the community of interest of the people of the bottom part of senatorial District 19 and the balance of 21?

A Well, I must say that I think probably what -- we looked at Bexar County as all the citizens of Bexar County having primarily the same community of interest and having community of interest with South Texas. I did not feel like or did anyone ever discuss that we had to go into Bexar County and try to pick out precincts where the people had more of a community of interest or less of a

community of interest with citizens in South Texas -- in these counties here. I assume that all Bexar Counties consider themselves as South Texans, as much I mean, and when I think of Bexar County, while I know that there is diversification in that county, when I think of Bexar County as a state wide official, I think of a county that has primarily the same community of interest. We are talking about education, we are talking about water, talking about roads, the problems that the state deals with and the state Legislature deals with. I have had the feeling in trying to be a conscientious state official that Bexar Counties had primarily the same community of interest.

Q All right. This is your personal recollection of Bexar County.

A Yes.

Q But did you give any thought or any consideration to whether or not there was a greater community of interest between the lower part of the county which is more compact than that of the northeastern portion of the county?

A No, I have got to say that I did not give a great deal of thought that the people in the -- in one part of the county would have a greater community

of interest with these counties than people in another part of the county.

Q Did you give any thought to it?

A Well, that is a difficult decision to answer. I know that I asked the Attorney General not one time but many times about the bill and making certain that as far as compactness and community of interest and the other guidelines, although they have not been defined as well as I would like to see them defined by the Supreme Court, that we were meeting the requirements to the best of the Attorney General and his staff's knowledge, and I was told time and time again that we were.

Q Would you say, then, would it be fair for you to say that you based your judgment that you had on the approval of senatorial districts 19, 26, and 21 on the fact that the Attorney General told you that they met the constitutional legal test?

A Well, I had no other alternative as a state official but to rely on the Attorney General's judgment as far as constitutionality of these bills. Certainly I had some judgment, but as I pointed out earlier, it is that of purely a layman's judgment.

Q Did you rely on him on any of the factual data that might have been considered in these matters?

A I am aware that the Attorney General's staff contributed factual data when working with the staff. If you are asking me if I specifically requested any factual data as far as the facts are concerned with putting the census tracts, the Legislative Council supplied all that.

Q Did you consider all this or did you delegate---

A

Q Get the data that went back. I believe it is objectionable to the Attorney General.

A Yes.

Q Did you rely on the judgment of Mr. Spellings and Mr. Hooser?

A To get all the facts necessary to draw this bill?

Q Yes.

A I relied on Mr. Spellings, Mr. Hooser, Mr. Johnson and the Legislative Council. That is the purpose of funding the Legislative Council; is to have a research arm of the Legislature to get to the legislative branch of the government, which I am a member of that branch, the facts that they need to be able to make intelligent legislative decisions, and I relied on the Legislative Council in this matter, as I have in many other legislative matters.

Q And I presume that you feel at this time that

districts, senatorial districts 19, 26 and 21 are as good fairly, constitutionally, from an ethnic, political, racial, community of interest, meeting a test of contiguity and compactness, satisfy you in your own mind as being a proper set of three senatorial districts to fairly represent all the people that I have stated in the groups?

A Yes, I do. Now, I am not saying that if maybe with a lot of work, that somebody else could not come up with a better plan, but I think it meets the constitutional requirements, and in my opinion it is a fair plan.

Q This is the reason that I asked you earlier whether or not you feel or felt -- feel that the time element that was involved -- and I know that you did have a plethora of evidence, telegrams, witnesses, people that had an interest either subjective or objective in these matters, that whether or not the time element could have affected the ultimate outcome of the two plans.

A Well, if I were to tell you that I think positively the time element didn't have any effect, that would be wrong because yes, the time element did have some effect. It has been my experience after eleven years in the Legislature that every time

reapportionment comes about, it always comes about on a crisis basis because it is such a difficult issue. I know of no other issue that is more difficult that state government has had to do in the past twenty years, than reapportionment.

Q And you as a good Democrat and eleven years---

A Yes.

Q --in the public service, certainly realize and recognize the interest of the various voters from not only your constituency when you were in the Legislature, but the State of Texas are most vital to our form of government, aren't they, whether racial, ethnic, political, or whatever?

A Well, yes, they are.

Q And you did, with all these thoughts in mind, feel that this was the best that you could come up with and feel that it is fair and treat all people fairly?

A Yes, I do.

MR. EASON: I believe that's all.

Questions by Mr. Richards:

Q Governor Barnes, I will try not to be repetitious, but there will be some undoubted repetition, but I am going to try to turn my attention essentially to

House reapportionment and to essentially the questions of multi-member districts in the urban counties. I take it from your testimony earlier that you confirmed today that your philosophical view, at least, is that individual member districts for the Texas House are preferable?

A That's right.

Q And that was your view, I take it, during the course of deliberations on---

A It has been my view since 1963 since Congressman Eckhardt and I sponsored a resolution to that effect.

Q At the time of the reapportionment in 1965?

A Yes.

Q All right, sir. Will you tell me in terms of how you saw it the Redistricting Board went about gathering the evidence that it relied upon and you relied upon in formulating the House plan as it was approved.

A Well, of course, we had the bill that the court had declared unconstitutional, and of course we had the Supreme Court decision that any division or crossing of a county line had to be justified. They struck down, the Texas Supreme Court did, the House bill. That was one of the points they spoke

to in their decision. And I think probably we started drawing the bill with trying to meet the Texas Supreme Court's guidelines for constitutionality first, and of course we were -- the Attorney General's office continually made us aware of what they thought the federal courts had said. If you are specifically speaking to the individual member districts in urban areas. The Attorney General on numerous occasions said he thought that either multi-member or individual member districts were constitutional, and about the specific point, if you could do Harris County one way and do Dallas and Bexar and Tarrant another, he said yes, he felt like it would be constitutional because we had in 1966 done exactly basically the same thing. I mean we divided -- and I think since we were going to have to draw some lines in Harris County and congressional lines were not going to work because you were going to have to be taking in some other counties and it would not work because Harris County came out with exactly what was it, three congressmen, and so it worked out perfectly, but we were going to have to draw some new political boundaries. Well, since we were going to have to draw some new

political boundaries, I felt strong about going ahead and getting individual member districts established in Harris County, and I think this was upon my direction that the individual member districts were drawn in Harris County. Now, I have spoken---

Q All right. Okay. Fine. Go ahead.

A I have spoken to the point about the people that we heard from in Bexar County and Tarrant County and Dallas County and about what I thought the Commission would have done in a showdown vote and about the fact that I felt it was best for -- it wasn't going to be only in those counties -- I have forgotten exactly how many areas there are, but there was a lot of division to be done like in Travis County, I think, and Nueces County.

Q All right. But let's see. Of course you had hearings you attended.

A Yes.

Q At which witnesses appeared and offered evidence in terms of the preferences of the citizens of various counties, is that correct?

A That's true.

Q I take it you took into account what you heard from---

A Yes, certainly, at the hearings and in communications

that we had from interested citizens.

Q So you relied upon both what you heard in the hearings and what you received through other sources?

A What we received through other sources.

Q Now, what--

A Let me -- while they should not be the case, the only ones we listened to, the elected legislators from Harris County overwhelmingly favored individual member districts. Elected legislators from Bexar, Tarrant, and Dallas overwhelmingly favored at-large representation.

Q Actually, I guess there were three divisions among the Dallas County legislators, were there not, some favored individual member districts, some proposed the possibility of carving Dallas County into six or three-man districts, and others who favored at-large districts.

A Well, yes.

Q Is that correct?

A Yes. Now, I was opposed to -- at first I thought about trying to go along with senatorial district lines. They had already been approved. You got into all kinds of trouble with that because of -- in Tarrant County it worked fine because you had

two senatorial districts and you had to cross county lines to get some surplus in the other. In Dallas County it didn't work. It was obvious from other political boundaries that it would have to be drawn.

Q Were efforts made at all that you were aware of to try to draw districts in Dallas County of less than county wide by you or your staff?

A Robert Spellings and Greg Hooser tried to see if it could be worked out to draw House districts along senatorial district lines.

Q Did they actually come up with a plan, a map that showed the drawing of such districts?

A I don't know whether they completed a map or not, but they ran into a lot of difficulty and came back -- and have you all taken Spellings's deposition yet; have you taken his deposition? He can speak to this more about what specifically caused a problem. They came back and recommended we were going to something less than individual member districts, that you drew complete new boundaries and not try to rely on congressional lines or senatorial lines, because it was just too complicated.

Q So the staff recommendation of Spellings and Hooser were if you were going to carve Dallas County that

you go to individual member districts.

A Well, yes, or you would have to go and draw some new political lines just for House of Representatives, see.

Q Was this recommendation made only to you, do you know whether it was made to Barnes -- I mean was this report made only to you or was it also made to Attorney General Martin, do you know?

A You will have to ask them. I really don't know.

Q You don't know.

A But it was my -- I said -- as a matter of fact, I was quoted in the press as saying, suggesting a senatorial district approach, and they came there, so I doubt if they did, but I don't know.

Q Well, I guess the thing that puzzles me is that you, I take it, are expressing here today a continued preference for single member districts---

A Yes.

Q ---in a county at least as large as Dallas, is that correct?

A I really would prefer and am for, if I had the right to do it Ben Barnes's way, I am for individual member districts all over the state. I am for one hundred and fifty individual member districts.

Q Do you make any distinction in your mind in

expressing this preference between a county of the size of Dallas, a million-three, and a county the size of Travis, I suppose closer to three hundred thousand, do you think it is even more preferable in Dallas County than in Travis County?

A Well, I think the larger the county is, the more preferable it is.

Q And the reasons, I assume, are partly just capacity to relate to the voter?

A Well, the capacity to relate to the voters, the cost of running for office. I just, as I have said on numerous times, I have always felt like that it was not the best representation when I was seated in the Texas House representing sixty thousand persons and the man representing Harris County seated next to me, was representing a million people.

Q You saw in that some inequity, is that it?

A Yes.

Q I assume -- let me ask you. Does your office or your staff maintain a diary of telephone calls so -- log of telephone calls that would reflect the calls that you received on this question, say, from Dallas County?

A No, they really don't. I mean when someone leaves

word——

Q All right.

A ——when it is a leave word, it is reflected, but if the call comes in and I talk on a call, there is never any record made of it.

Q The background call, you have one of those carbon things that keeps——

A It's not a carbon. It's just a spiral notebook, not like that one, like the one that she has got there.

Q And all the calls are recorded on that that you are supposed to pick up, whether you pick them up or not?

A Yes, and I understand that for instance Dan Holmes called from Dallas, and I never got the call, so it is a good example. It is impossible, it is obviously impossible for me to return all the calls. That is one man I know that called me because he was upset with me at first because he didn't think I got his call. I mean he didn't think I returned his call, and I really didn't get it.

Q All right. Did you keep or have you maintained a file of correspondence, written communications relating to the redistricting issue?

A We didn't — I was asked this about the congressional

suit. My correspondence is filed under alphabetical order. We have a master file. I didn't find out until the congressional redistricting. We have got fifteen three-drawer cabinets full of correspondence and it is filed not under subject matter, but it is filed by the name of the person who writes the correspondence.

Q All right.

A But if somebody, I am sure,-- I don't know whether Commissioner Armstrong or General Martin or someone -- if someone certainly -- I probably had more people contact -- well, I don't know. Attorney General Martin may have had more people contact him because he was chairman, but a lot of my correspondence was directed to all five of us, copies were sent to all five of us.

Q Right. There will be duplications.

A I mean there will be duplications of it.

Q I guess,I am trying to understand exactly how it was that you reached the determination that the majority of the persons in Dallas County favored the at-large system.

A Now, I---

Q If you did make that determination.

A I say this. The majority of the people that

contacted me--

Q All right.

A --now, please -- I do want to make that--

Q Okay.

A I am not too sure the man on the street really understands what we are debating here, at large. I think if you asked a man, would you like to have one man represent you, living down the street representing you, or whether you would like to have ten men living some other place, I think probably the majority of the people would say, I want that one man, but--

Q You were really saying the majority of people who contacted you by letter or by phone from Dallas County were expressing preference for at-large--

A Yes, and from Tarrant County and from Bexar County by an overwhelming -- I would say, oh, four or five to one.

Q Have you gone back to look at -- have you gone back or can you even reasonably go back to your correspondence to determine really the ratio --

obviously you received letters favorable, favoring individual member districts.

A Yes, I think that would be a good question to ask Robert Spellings. I am not trying to avoid it, but

I mean he is really in a position to tell you more than I am.

Q What precisely is Mr. Spellings's relationship to you in terms of title?

A Well, he is the Executive Administrative Assistant in the Lieutenant Governor's office.

Q I mean in lines of responsibility, he is the person that answers directly to you, I suppose?

A Yes, he answers directly to me, right.

Q Now, we have been told that Mr. Spellings has played a principal role in both determination of the House and senatorial district lines. Is that accurate, as you understand it, in the drawing of the lines?

A Well, yes, I would say -- I said this earlier. It is repetitious. I would say Mr. Spellings and Mr. Hooser and the Assistant Attorney Generals -- and I know Armstrong worked with them some. I don't know how much Mr. Calvert actually came over and spent any time looking at the maps, and of course, Speaker Mutscher in the House redistricting -- let me say this. Now, you have got to understand that Speaker Mutscher had an alternate plan, he didn't vote for this plan and was very much opposed to it, and so stated at the period when we voted, so he

didn't work on this.

Q Yes. I understand Speaker Mutscher was preparing his own plans throughout this period of time, is that correct?

A Yes.

Q I take it from what Attorney General Martin has told us that there were no formal meetings of the Commission other than those that were public, is that correct?

A That's right. That's absolutely right.

Q Now, you have told us, as he has, that Attorney General Martin really never expressed a preference one way or the other with respect to whether you carved Dallas County, for example, into individual member districts or left them running at large, is that correct?

A Well, in the informal discussions with the Attorney General and with Commissioner Armstrong, if you are asking me, I thought the vote was two, two, and one and probably--

Q By two, two, and one, what do you mean by that?

A I would have thought that Commissioner Armstrong and I would have voted for defining the State of Texas into a hundred and fifty member districts. I thought both Mr. Calvert and Speaker Mutscher

expressed themselves publicly as being opposed to this, and the Attorney General never did, I don't think -- he may have. I am not certain of this -- that he ever came out publicly and said what he thought, but I thought it a -- because of -- not because of his individual preference, but I always felt like because of the support for at-large representation in Dallas and Tarrant and Bexar counties, that the vote was three to two against individual member districts.

Q But I gather from what we have been told to date that issue never was really faced directly.

A Well, it was faced. If you are asking me if I said, "All right, Crawford, we are going to vote---"

Q No, I am asking you if ever a time came when that issue was squarely presented by you or anyone else, to your knowledge, to Attorney General Martin as to whether he preferred individual or county wide districting in Dallas County.

A I don't know that we ever talked about Dallas County. We talked about -- when I made the recommendation that we divide Harris County into individual member districts---

Q What occasion was this?

A This was early in the -- at the---

Q Was this a formal hearing---
A No, it was---
Q A caucus or---
A It was at the conclusion of one of the public hearings. As a matter of fact, I think I had already said it in the press and they had already read it, about that. There was only Speaker Mutscher objected to that at that time.
Q All right.
A But we never did talk about whether we were going to do Dallas County when we were talking about it, or at least they may have talked about it, but I don't remember any conversations. We talked about the rest of the state.
Q You don't recall ever talking about Dallas as a separate matter?
A Well, I am not going to say that for sure, but I recommended senatorial districts for the large urban counties and maybe we -- no, I don't remember whether we talked about Dallas County specifically.
Q Well, is it fair then to say that at least the issue, as far as Dallas County was concerned, was never faced directly and debated, as far as you know, between the members of the Commission as to whether to carve it into single member districts?

A Now, are you talking about at a public hearing, it was never---

Q At public or private.

A And I can't speak to -- I can't speak to what conversations Attorney General Martin had over the phone with any other people.

Q No. Talking about when you participated.

A When I participated, now, I had phone calls, now, from Dallas County saying don't divide Dallas County up, and phone calls that said divide them up.

Q I am talking about when -- we are out here trying to understand as best we can how it came to pass now, a bill has been adopted that leaves Dallas County running at large, and trying to see when that decision was made---

A When that decision was made---

Q ---how it was reached and when it was made, if you can give us any guidance on it.

A Well, I can't give you guidance specifically as far as Dallas County is concerned. I can give you guidance as far as what the rest of the areas that could be divided into multi-member districts was made sometime during the -- oh, I would say the last week of the drawing of the bill. I am not---

Q And how did it come about, that decision?

A It came about by just an assumption that if we had a public hearing and a vote, that the vote would probably be three to two against it.

Q That was your assumption?

A Well, if you are asking me what I thought, whether I thought that it would get individual member districts for us to have a meeting and vote on whether we were going to divide individual member districts, no, I would have thought the vote would be three to two against it.

Q But the point -- I guess I am clear -- that never came to pass.

A That never came to pass as far as a formal vote in the record, no.

Q Or for that matter, did it ever come to pass if we assume, as you have, that Mr. Armstrong, who has already testified that he was unequivocally in favor of single member districts, Speaker Matscher opposed, and Mr. Calvert perhaps not strongly either way, but you have assumed, as I understand, that Attorney General Martin was essentially the swing vote, two, two, one and two, three on the issue, is that correct?

A Yes.

Q As I understand your testimony, and frankly, as I understand his, the issue never was really drawn between you as to how he would vote if confronted with a vote on the question?

A Well, let me make, at least as far as what my thinking was---

Q First, was it ever drawn, did you ever really say to him, "Attorney General Martin, we now have to look at the rest of the state."?

A Crawford and I just---

Q What is your---

A We talked about the fact -- and I made this statement to Crawford and made it publicly that I would -- of course, I was disappointed that the Legislature wasn't drawing these lines to start with, and to divide the state into individual member districts, as far as this Commission was concerned, I was concerned about us having to do it in what did we have, only about seven or eight days left at the time we were talking about this of the twenty-three days, and while time was not the sole criterion, it certainly figured into it, but I did not just say, "Okay, Crawford. I am going to clear myself a spot here. I am going to pitch a fit. We are going to just lock up and we are going to do it,"

because the support that we were receiving for the individual member districts from over the state was not as strong as the support that we were receiving to leave at-large representation in those counties, and I think the Commission in good conscience and Bob Armstrong and myself found ourselves in the position where that we were trying in good faith to -- at least to get the job done and to get a constitutional bill drawn.

Q I understand that, and I just come back to see if I can be -- I think I have the answer, but I want to be certain, that as far as you recall, then, the question never came to any formal decision, that is, a question of how Attorney General Martin would vote if faced with the question---

A Well, the---

Q ---on whether or not to carve the state into individual member districts?

A Well, it did not come to a formal vote, but I think that you have been in discussion with people on numerous times after you discussed a matter at length, that you were able to reach a conclusion without having a show of hands.

Q Right. It was your intuitive judgment that he was opposed to single member districts, is that correct?

A Well, not that he was opposed to it, but that he was opposed to us attempting to do it in the time that was left, and that there was going to be real difficulty in trying to bring this about, and I have got to say this right here. I mean let me hasten to add to say that it wasn't only the Attorney General that I think -- I thought the best interest of the people, if it was constitutional, and the Attorney General assured me time and time again that it was constitutional, that the best interest might be served for us to go ahead and get this bill approved and let the Legislature come back hopefully in 1973 and draw individual member districts, which I have said that if I was in a position to recommend, I would recommend, but that would be watere down the line, but I didn't deadlock the Commission or try every day to bring about individual member districts. I want to make that clear.

Q I want to know what effort, if any, you made to bring about individual member districts in Dallas.

A I talked to the Attorney General about it when we first were assigned this task when the Commission -- about the fact that I hoped that it worked out for us to be able to draw a hundred and fifty individual

member districts.

Q No discussion, though, of Dallas County independently of the other urban counties?

A Dave, I don't really say, but I...

Q That's all right.

A I really don't know if someone said, "Let's just do Dallas and then let's leave Fort Worth and Bexar County like they are, but let's do Dallas." I really don't remember.

Q So as far as you now recall, you have no recollection of ever isolating Dallas County, discussing whether it's feasible to do Dallas as a large metropolitan area but leave the others intact?

A No, but now I know there was a discussion between me and the staff and -- when I was trying to work out something along senatorial district lines, because from a philosophical, not from a constitutional standpoint, from a philosophical standpoint, it concerned me with that many people being elected at large.

Q Dallas County?

A Yes. Well, and Bexar and Tarrant also.

Q Let me be clear about the kind of questions I'm asking you. I am not asking you to pass your judgment on the constitutionality of the legislation

which you enacted. I am concerned about your opinion and your preference.

A Yes.

Q You expressed on a question a moment ago that it was your preference that if necessary, the federal court direct the Legislature to come back in special session and draft a single member district plan. Is that still your preference?

A Yes, it is. If this bill is unconstitutional, I certainly think the Legislature ought to be convened back in session to attempt to draw a constitutional plan, and I feel like -- I am not going to editorialize. I will shut up.

Q I take it you were aware of the view -- what were you going to editorialize about? I am sorry. What did you start to say? I didn't want to cut you off.

MR. McDANIEL: You couldn't resist, could you?

A My counsel are just having -- they are having apoplexy over me talking so much.

Q All right. You think you are getting vibrations from your---

A But I feel like that even though the Legislature refused to -- had failed to do the redistricting in a special session if the Governor said even

though they didn't do it in a special session, I am going to call them back, even though the Constitution provides that the Commission should do it, if the Legislature had been called back and they had drawn two bills, I think the federal court would have upheld those legislative acts as constitutional if the bills had been good bills.

MR. McDANIEL: Understand we don't know whether the state Supreme Court would have or not.

Q I was going to ask you what your view, if you had a view, on whether or not the fact that we are stuck with this redistricting plan for the next ten years.

A Well, see, that -- no, we are not stuck with it for the next ten years. The Legislature can reapportion itself any time it wants.

Q That's your view of the Constitution?

A Yes. Well, if that is not true, then the bills that we passed in 1967 and '69, because a precinct line or two was changed -- wasn't it Hauzy? No, it was Ike Harris and McCool that swapped two precinct lines in '69 when the Legislature met. Isn't that right, Mr. Luna? There are mini-redistricting -- mini, m-i-n-i redistricting bills passed nearly every session changing something, so

I think---

Q A bill to get Mike's house in his district, though?

A That's right.

Q I assume you were aware---

MR. McDANIEL: Understand the Attorney General's office is expressing no opinion about the legality of these particular plans.

MR. RICHARDS: Okay. Good. I have that of record. You really aren't?

MR. McDANIEL: No.

MR. RICHARDS: You think the jury is still out on these.

MR. McDANIEL: We have not been called to pass upon what the state law is on this, so far as I know. We may have down here in our files some opinion that is fifty years old that passes on it, but I don't know about it if we do.

Q You have some familiarity with the -- I suppose -- the population makeup of Dallas County, the concentration of blacks and citizens in south Dallas and south Oak Cliff. Are you generally familiar with them?

A Yes.

Q The view has been expressed by newspaper people, at least, and others that carving Dallas County

into individual member districts would in all likelihood increase the number of black legislators of Dallas County. Do you have any opinion on that as to whether it would tend to increase the number of black legislators in Dallas County?

A I really don't know. I would think that it might, but of course, how many -- let me ask you this. In the past -- and I am not trying to ask a question I know the answer to -- how many black legislators have run and been defeated from Dallas County?

Q There has never been more than, as I understand, one black legislator.

MR. CUNNINGHAM: No.

MR. RICHARDS: That run and been defeated. My information -- and maybe we will have to verify this -- there never was a black legislator candidate after Reconstruction until Mr. Bedford who ran in the early 50's and was defeated and thereafter---

A No. My question is, is there---

Q I am sorry.

A ---proved that at-large representation discriminates against a black's chances of getting elected?

Q Oh, that is not the question I am asking you. I am just saying---

MR. McDANIEL: That is the question we are

supposed to be deciding in the court case.

Q Yes, I guess that is right, and of course, it is our legal contention that it does. My question simply is as a political person, whether you felt, taking into account the size of the black population in Dallas County, the relative concentration of it in certain areas of Dallas County, whether the carving of Dallas County into individual member districts would tend to produce more than one black legislator out of the eighteen that are -- fifteen that are presently serving?

A I think that's possibly true, but I am not -- I can't just say it with any degree of certainty.

Q Is this a matter that you took into consideration one way or the other in attempting to evaluate the desirability of single member districts versus multi-member?

A This is one of the things that goes into my judgment as far as individual member districts are concerned. I mean it's not---

Q You mean part of your expressed preference for individual member districts is based upon the assumption that it would produce in urban areas, I suppose.

A I think there would be more -- for instance, maybe

more Republicans, but of course Dallas County has -- the at-large representation, they have been able to -- in Dallas County they sweep that county and Republicans be elected--

Q One time?

A --absolutely, yes, one time.

Q The question was asked me, and I want to be sure I understand you. Sometimes lawyers think they have an answer to a question and they don't. As I understand what you have really said, it was that part of the basis for your philosophical preference for individual member districts, particularly in urban counties, is that it would tend to result in the election of minority -- whether it is racial minority or other political minority -- viewpoints, have them--

A Well, let me say I have no evidence. I answered that question -- that was a philosophical thought on my part.

Q I accurately stated the philosophical basis.

A Yes.

Q So far as you know, were there any factors, historical factors that governed the -- for example, that governed the decision not to cut Dallas County into single--

A Excuse me?

Q Were there factors such as historical factors that motivated the decision of the Board not to carve Dallas County into single member districts or something less than at large?

MR. CURRY: That is a very broad question on what is historical.

A If you are asking me, Dallas County has by and large, I think, because you have seen us -- a Democratic ticket elected recently in that county. I think Dallas County has had effective representation, and I don't think the at-large representation has taken away from the effectiveness of that delegation, and I find that in Dallas County, Dave -- and again, this is pure speculation and just philosophy on my part, but Dallas County has -- as far as the political leadership of that county, has been proud of the representation in most instances. I am not saying everybody is a hundred per cent satisfied, but the at-large representation has been considered by many in Dallas as an asset to that county.

Now, let me say this again, and I have not hesitated to disagree with those people who feel that way about individual member districts;

that doesn't change my---

Q Well, of course I guess you are aware, are you not, that the people who normally get their legislative candidates, the House members, elected -- for example, the Democratic Committee for Responsible Government is not that happy with the senatorial representation, is it? Have you ever encountered in that connection some feeling that they weren't that happy that they had Senators McNeil and Meany and Harris down here, although they were perfectly happy with their House delegation?

A Oh, I don't know that that is -- most of my friends in Dallas County are -- there is degrees of happiness, Dave.

Q I take it from everything that you have said to us that nothing took place during the hearings of the Legislative Redistricting Board or the private contacts that you might have had either orally or in writing during -- to alter your opinion that single member districts are still preferable.

A Well, now---

Q Your opinion.

A As far as my opinion.

Q That's all.

A Okay. You have just asked me my opinion. Okay.

That's right.

Q Your opinion was and is and remained throughout that single member districts for the lower house were preferable?

A Right, and I would like to see the Texas House of Representatives divide itself into a hundred and fifty individual member districts.

Q Or the federal court to do it for them?

A Well, I would prefer the Texas House of Representatives, not that that is going to be of any importance to the federal judges, but---

MR. RICHARDS: That's all.

Questions by Mr. Idar:

Q Mr. Barnes, it is my turn at bat.

A All right. Fine.

Q My name is Ed Idar, I-d-a-r, Jr., and I represent a group of intervenors in the entitled lawsuit, the Bejarano case, headed by Senator Joe Bernal. We represent, you might say, the Mexican-American intervenors in this issue, at least we represent the Mexican-Americans as a statewide class and specific classes in certain counties like Dallas, Bexar, Hidalgo and Nueces.

I would like to get some kind of frame by way of time as to sequence of events here; I would like to satisfy myself. To begin with, it is my understanding that at the time the Texas Supreme Court ruled on your House redistricting plan that was enacted by the regular session or special session, whichever one, the Legislative Redistricting Board was already in being for purposes of redistricting the Senate?

A That's true.

Q And you had roughly twenty-three days' notice, approximately, from the time of that court decision to the deadline when you would go out -- when the life of the Commission would expire?

A That's true.
Q Do you recall when the constitutional amendment was enacted that provided or created this Legislative Redistricting Board; was that sometime in the late forties?
A Yes, I think that's correct. I am not sure of the date, though.
Q Now, the reason for that constitutional amendment was the fact that at the time it was enacted the Legislature had failed to redistrict itself something like twenty or thirty years?
A That's true.
Q Was that the basic reason?
A Yes, that's my understanding.
Q In other words, the Legislature had abdicated its express responsibility imposed upon it---
A That's true.
Q ---by the constitution?
A My understanding.
Q All right. Now, getting back to the sequence of events, I am going to have to rely to some extent on newspaper stories here; you can either confirm or deny what is alleged here in the stories. I am referring here to a bylined article, apparently in the Houston Chronicle of October 10, 1971, with

Bo Byers' byline which indicates -- the second paragraph reading as follows:

"An October 23 deadline for completion of the reapportionment task is rushing toward the Legislative Redistricting Board, of which Martin is Chairman," referring to the Attorney General.

MR. GREENBERG: Can we ask if you are going to ask a question from a written document, that that document be marked so that later on--

MR. IDAR: I would be glad to go ahead and--

MR. GREENBERG: I don't want to confuse things, but I think just as a matter of procedure, it might be helpful.

MR. IDAR: Mark this; is that the first exhibit in the deposition?

MR. GREENBERG: No, there are some others.

(The document referred to was marked as Barnes Exhibit No. 2, and is attached hereto.

Q Let me start over again, reading the second paragraph of the same story. "An October 23 deadline for completion of the reapportionment task is rushing toward the Legislative Redistricting Board, of which Martin is chairman, and as of this writing, the staff has no guidelines from the board on how to approach the job.

"The big census" going on, "the one that has

the board on high center, is whether to draw 150 single member districts or whether to allow multi-member districts in metropolitan areas."

Now, my question, based on this news story, is whether or not that statement there that as of October 10 apparently the staff still had no guidelines from the board on this issue of single member versus multi-member districts in the major metropolitan areas.

A I don't know whether that was before or after the guidelines were given as far as Harris County was concerned.

Q How about would that be a true statement as to the rest of the metropolitan areas in the state?

A I would assume at that time that the rest of the metropolitan areas were still being talked about and discussed informally by members of the Commission.

Q And the staff had not yet been advised whether to go for single or multi-member districts?

A That's right.

Q Well, I am going to give you that, since that has been marked as an exhibit here. We have another news story here in the Houston Chronicle, which apparently was the Chronicle for October 12, 1971, with a byline by Reid Beveridge, and would you go ahead and mark this.

(The document was marked for identification as Bernso Exhibit (No.), and is attached.

Q Now, reading from a portion of this story -- and it will be part of the record here, I suppose, if anybody wants to have it attached -- at one point that, quote, Commissioner Armstrong here -- I am going to read the pertinent paragraph:

"Asked what, if anything, has been decided on House redistricting, Armstrong said, 'Not one thing that I know of. That disturbs me because of the time problem. I think we should get started right away.'"

Would that be a fair statement of your recollection as to the date -- as to the situation at the time this news story was run?

A Hey, I don't have any idea, sir. As far as what Mr. Armstrong was talking about, you will have to ask him about the facts, as far as what we were doing on October 13, I mean I don't remember what -- specifically what the Commission was doing, and as I have testified to earlier here today, the workings were informal. Mr. Armstrong knew where the staff was, knew where they were working, he was free -- Mr. Armstrong or any other member of this Commission was free to -- as Speaker Hotcher was working separately on drawing his own bill, Mr. Armstrong certainly had the right

to draw single member districts and to start working on them any time he wanted to.

Q Well, my question, though, is whether or not you recall -- let me rephrase it. Do you recall whether or not by October 12 the staff had been given any guidelines by the board as an official body on how they were to proceed on the major metropolitan areas?

A It was my thinking, and it has been my experience on other redistricting bills, to go ahead and get the rural districts drawn and then the decision to -- whether to divide the cities up into individual member districts can be a last-minute decision after you have got the rural areas worked out, because you are talking about dividing up within the confines of Bexar County.

Q Yes. But we are here -- following that line of argument, we are assuming here that on or around October 10 or October 12 this board was acting in a vacuum, that no work had been done toward legislative redistricting in Texas, which was not the case; is that correct?

A That's not true.

Q Huh?

A That's not true.

Q That's right; you had gone through a regular session

and a special session of the legislature, at which considerable work had been done by you and a number of other people on redistricting.

A That's right.

Q So that it wasn't as though the board started afresh with no prior knowledge or background or information or plans upon which to rely, is that correct?

A Well, the only plans, as far as House redistricting, that we had to rely on, were unconstitutional, and they had been declared unconstitutional by the Texas Supreme Court, so we did not have any constitutional plans. I did not see -- of all the maps that that House committee had in their file, they were all unconstitutional in the eyes of the Texas Supreme Court, and had been so declared.

Q I recognize that, but the point I am making is the fact that the Texas Legislative Council, working with the Legislature and the Senate and House committees dealing with House and Senate reapportionment, already had a tremendous amount of data upon which to work.

A Sure.

Q Okay. Going on now to the next date here on the time -- this is really not so much a matter of time; I just want to see whether you had similar experience,

as apparently Mr. Martin did. Would you mark this one.

(A document was marked Barnes (Exhibit No. 4.

Q I have here in my hand another news story from the Houston Chronicle, apparently ran on October 13, 1971, and it again is bylined by Reid Beveridge. There is one paragraph in this story that I would like to quote for the record, because I would like to lay a predicate for a question I would like to ask you. This paragraph reads:

"However, Martin apparently is feeling considerable pressure from the Dallas establishment to retain countywide districts like the one that now elects all 15 of Dallas' House members at large."

My question to you is, of course, you don't know what kind of pressure Mr. Martin received or whether this would be true as relates to him, but did you receive any pressure yourself on whatever they consider here to be the Dallas establishment?

A I don't know what the Dallas establishment is. I testified to two previous questions that the overwhelming number of people that contacted me from Dallas County were for at large representation.

Q Would you categorize those people as to whether,

for example, were they business or professional groups or representative attorneys, representatives of major banks or major business interests?

A Oh, I would say that it was a cross-section of the Dallas community, I would say; I am sure there might have been more business men than there were anybody else in that category. Some letters you get from people that are -- you don't know what their professions are.

Q Okay. Would you mark this.

(A document was marked for identification as Barnes Exhibit No. 5.

Q I would now like to refer to another news story that apparently appeared in the Austin American Statesman on October 16, 1971, and this first paragraph reads as follows:

"Lt. Gov. Ben Barnes said Friday night he has ordered his staff" -- let me back-track a minute here. This apparently is an AP story; it has an AP signet here indicating the story emanated in Houston. Then it goes on to say the following:

"Lt. Gov. Ben Barnes said Friday night he has ordered his staff to prepare a single-member Texas House redistricting plan for Houston, regardless of what the Legislative Redistricting Board approves

for the state's other urban areas, the Houston Post said in its Saturday editions."

Do you recall whether or not that is a true quote of whatever you might have told the Houston Post on this occasion?

A Well, I don't recall, but I assume that was about the time that the other members of the board had agreed to go along with individual member districts for Harris County.

Q And is it on or about October 16 that you went ahead and ordered your staff to start on a single member district?

A I am not for sure about the date. It could have been several days prior to that time. I don't know. That could have been when we made it public. I don't know that we necessarily made it public the day that we did it.

MR. IDAR: We marked this one (5) for admission.

Q (By Mr. Idar) Under interrogation -- I don't recall -- this could have been by Mr. Bery -- you indicated that in your opinion, minority groups may be better off if they were put in several different districts rather than concentrated in one or more individual districts?

A That's not what -- I didn't say that I had any proof

of that. I said philosophically that I felt that way.
Q Do you relate that in any way to the possibility of diluting the voting strength of minority groups when you spread them out among different districts rather than---
A I have not -- I have not seen any proof that there has been dilution from that large representation.
Q Suppose you do have an area, say, with 75,000 Mexican-American or black voters in it, and as we know the difficulties in voting -- redistricting, it would be conceivable that those could be at least split off in two or three or more areas so as to spread them out among other districts in line with the philosophy that you have just indicated you believe in. Wouldn't that be a dilution of that vote?
A If you had individual member districts and you had 75,000 people living in the district and you split them four different ways, yes, that would be dilution; but you would have to take it a step further and see what kind of people that were elected to represent those four areas you diluted that strength to.
Q All right. Now, you made reference in your earlier testimony that in South Texas you divided one town down the Main Street. Can you tell us what town that was?

A It's in Hidalgo County. I can't think what the name of the town is. It's a small town in Hidalgo County.

Q Okay. You made another allusion in your testimony that I am a little curious about. You indicated that one of the factors you considered in arriving at House redistricting -- you can restate this if I am incorrect; you might have stated as to both Senate and also as to the House, one or the other or both -- that you felt that one of the factors to consider was to disrupt the least possible the current political climate in the state; you didn't want to disrupt the political climate in the state.

A No, what I -- what I meant -- I may argue with you on that. What I meant was to go ahead and get the district lines drawn, no matter what they were going to be. You're talking about the filing deadline of February 7 in Texas. I think people need to know what district they are in several months before election. I think would-be candidates need to know what the district lines are when they make their plans to run, and what I was referring to was the political processes of 1972 not to be disrupted any more than what they had already been disrupted by people not knowing where the lines were in October of 1971.

Q As I recall -- I might be subject to correction here,

but I was under the impression that at the time you were responding along this line, you were referring not so much to the time element but to the disruption of the existing political lines and so forth in the particular areas.

A No, I am not -- I am not -- if I did testify to that, there is a misinterpretation of my remarks.

Q All right.

A I was talking about from -- I'm talking about if a city is going to be split, the voter is entitled to know sometime before filing deadlines exactly where the political lines are going to be.

Q Okay. Going on now to something else, you indicated earlier in your testimony that you missed one of the meetings of the board; this was a public meeting. I believe that was when you were down in San Antonio?

A That's right.

Q Was this a meeting where Mr. Armstrong allegedly was going to raise the question of single versus multi-member districts before the board?

A I had no idea that Mr. Armstrong was going to raise that issue, and Mr. Armstrong gave no notification of this, and we only have Mr. Armstrong's word of -- and he didn't bring it up at the meeting; he told the press afterwards that he would have -- that he was

planning to bring it up. But I received only two hours' notification that that meeting was going to meet, and there was no important business transacted at that meeting. And we had two other meetings after that. If Mr. Armstrong had wanted to make that motion publicly, he would have had that opportunity to with all five members of the Commission there.

Q I have here the proceedings of the meeting of this board held on October 6, 1971, which apparently was a public meeting, because it reflects the fact that Senator Mauzy and Victor Robertson and a number of other people appeared, and apparently it indicates that members of the board that were present included Mr. Martin, Mr. Mutscher, Mr. Calvert, and Mr. Armstrong. Is this the meeting that you missed?

A If that is what that record reflects, that is the meeting.

Q Do you recall specifically missing the meeting at which Senator Mauzy testified, for example? Would that help you?

A I think Mr. Mauzy probably testified at two meetings. I think I was there -- at least, he was present.

Q Well, the last witness at this particular meeting was John Alanis.

A That's the one I missed.

Q All right. Did you after you returned make any inquiry as to what had gone on at this particular meeting?

A Yes, I did. I was told that Mr. Alanis was some hour late and they had to wait on him. He came in and testified very briefly that he wanted Bexar County divided into individual member districts, but his presentation was very brief.

Q Apparently, as far as Dallas County is concerned, you had a number of people and you had letters and correspondence and other contacts, and the opinion there was mixed as to what the people wanted?

A Well, it was this, there was a division, but as I testified to earlier, the overwhelming amount of contact that I had was from people that wanted at large representation, as you have asked me earlier.

Q Okay. Are you familiar with the Dallas firm known as Lewis, Bowles & Grace, that is supposed to be a public relations and polling firm there in Dallas?

A Yes, I am familiar with them.

Q Were you familiar with the fact that a Mr. Victor Robertson from that firm testified at this particular meeting that you missed?

A No; I wasn't familiar -- I know that Senator Mauzy presented the poll; I didn't know that there was a

man from the firm that presented the poll.

Q You did know about the poll?

A Yes, I was told about the poll or read about it in the newspapers; it was reported in the newspapers. I don't know where I got knowledge of the poll, but it was called to my attention, yes.

Q And you further know that the poll reflected that 61 per cent of the people in Dallas had a preference for single member districts?

A Well, of course, yes, I read that. A lot of the polls, that's something -- again let me say I am for individual member districts, and I think it was explained that maybe higher than 61 per cent, but on polls it is very important how the question is worded, and I think you have got to take a poll and study it and not read -- we politicians have a tendancy to always use polls or release polls on what people are thinking about ourselves and issues, and a lot of times the way the question is worded has a great deal to do with what the poll reflects.

Q In your earlier testimony, talking about the single member districts and why they were not enacted in the House bill the board ultimately approved, you indicated that the time factor was not the -- I think you---

A I said the sole criterion.

Q Or the absolute criterion?

A Yes.

Q All right. In your opinion, then, it could have been possible within the time left to come up with a single member district plan?

A Yes, I think it could have been possible to come up with that plan, yes.

Q Would that apply to all of the major metropolitan areas?

A Yes, I think it is possible to divide them. Now, how good a division it would have been, I don't know. But it would have -- to do it intelligently---

Q Let me rephrase my question. Could it have been possible to come up with a plan that would have met the constitution and other criteria that you used in the plan that was adopted?

A Well, counsel you are asking me again to speculate which I -- Bob Johnson told the Commission that it would be extremely difficult -- he said this in a public meeting; he is director of the Legislative Council -- it would be extremely difficult to come up with a bill that is by an individual district, but as far as actually drawing the lines dividing the state into 150 districts, yes, you could have done it. How good a job you would have done or --

I don't know. I have not had a chance to talk to people in Houston about the division of Harris County into the what, 24 districts that we did? I don't know what kind of mistakes have been made and how many people are unhappy, because if you could split precinct lines, if you could split voting precincts, you could do a much better job, but you have got to follow those census tracts, and the fact that you can't split census tracts requires a great deal of time in dividing these cities.

Q Well, we realize that, but it is true, is it not, that the Legislative Council was working very closely with Mr. Spellings and Mr. Hoosar?

A Yes.

Q It is further true that they had available a staff of anywhere from fifty to sixty people?

A No, I don't think that is -- I don't know that the ---

Q Do you know what the size of the staff is?

A I don't know what the size of the Legislative Council staff is, nor do I know how many people that Mr. Johnson had assigned on legislative redistricting.

Q If Mr. Johnson testified to the size of it, I suppose we could rely on that?

A Well, if he said there is fifty or sixty people.

Q You have been in Texas politics now, was it for eleven

years?
A Eleven years.
Q You served in the House how many years?
A I served in the House for four years and I served as Speaker four years.
Q And as Lieutenant Governor now?
A Three years.
Q You have rather extensive experience in Texas politics?
A Some would say that. Others would not.
Q And you have experience both at the local level, as well as on the statewide level?
A Yes.
Q You have conducted local campaigns, as well as---
A Yes.
Q ---statewide campaigns?
A Yes.
Q Would you care to make any comment, based upon your own -- I am not going to ask you this question based on what a political scientist might testify to. I am asking this question based upon your own experience as a practical politician in Texas politics.
A Thank you.
Q Because I believe that your word would have, I think, based on your experience, a lot more weight than that of the theorist or someone on some books dealing

with political science. My question is, do you have any opinions as to the cost of campaigning in a district with 75,000 people in contrast with a district that can run anywhere from seven to several hundred---

A It would be considerably less in a smaller district.

Q And the same would apply to one such as Dallas, with a million, three hundred thousand population?

A That's true.

Q Do you feel that we would get better representative democracy, say, on---

A I don't know that you would get better representatives or I don't know that the counties would be better represented. Let me say that I don't know. I feel like, from a personal philosophical standpoint, that the House would be better off if every man represented exactly the same number of people, and when the House is better off, I think the people would be better off. That is my personal political philosophy. I do not know, I cannot say that Bexar County would be better represented as far as this delegation versus the one -- the one they have got now versus the one that would be elected.

Q I realize that the quality of man elected would have a lot to do with it---

A True.

Q ---whether they are elected from a single member or a larger district. My question simply related to whether or not the -- we are always talking about that government is best that is closest to the people.

A That's what---

Q would you agree with me that a representative elected from a constituency of 75,000 people would be closer to the people than one elected from a constituency of 1,300,000?

A Well, in the opinion of a farm boy from De Leon, that would be true, but I am not saying that a man that is elected by a million, three hundred thousand people can't be close to the people, because he can. But it is a more difficult task.

Q Now, you were referring to Bexar County in your earlier testimony. They were querying you about community of interest, and I think it was relating to Senatorial District 21 and so forth. You are fairly familiar with San Antonio and Bexar County; I think you have been there a good number of times?

A Yes, sir.

Q You are familiar with the west side---

A Yes, sir.

Q ---which is a major geographical area populated by

Mexican Americans.

A Yes.

Q Are you familiar further with the Edgewood Independent School District?

A Yes.

Q Which is, I think, pretty close to 100 per cent Mexican Americans, is that about right?

A Uh huh.

Q Now, you are further familiar with the fact that this particular district has -- that the plaintiffs from that particular district have just prevailed in a federal court suit that is going to create some very serious problems for financing---

A Yes, sir.

Q ---Texas public education?

A Yes, sir, that's right.

Q My question is, even in the major cities you may have particular geographic areas that would have a community of interest in contrast to other major geographic areas within that particular city, is that correct?

A Yes, that's true.

Q As contrasting the Edgewood Independent School District, say, with the Alamo Heights or the Northeast Independent School District in San Antonio; that would

be true?

A That would be true.

Q Okay.

(Recess)

MR. IDAR: If you all don't mind, let's get on here. Mr. Barnes has agreed to proceed without Mr. McDaniel, so if there is no objection, we will go ahead. Mr. Curry?

MR. CURRY: Yes.

Q (By Mr. Idar) One thing that I would like to go into now is are you familiar with what we mean that an issue is justiciable in the courts?

A If what?

Q Justiciable. In other words, you can litigate it, it is open to question?

A Yes.

Q And are you familiar with the fact that multi-member districts are that type of an issue when they arise in legislative redistricting?

A Yes.

Q I gather that the Attorney General probably advised you all as to that when you were in the---

A Yes, sir, he advised us to that, but he also advised us that as the state's chief legal officer, he thought that multi-member districts were constitutional,

both in the State Supreme Court and United States Federal Court.

Q Yes, but I gather that he further advised you that they could be contested in courts and it would be up to the courts to determine actually whether they were constitutional or not?

A Yes.

Q Okay. Did he further advise you as to the guidelines, constitutional guidelines relating to the dilution or minimization or cancellation of minority group votes, such as blacks or Mexican Americans or other political elements that could constitute an identifiable group?

A Yes, he did in general terms.

Q Do you know whether the board ever gave the staff any guidelines along those lines, cautioned them about this in particular?

A No, but the staff was present when the Attorney General was outlining most of these things.

Q Do you know whether the State of Texas, as a state, has ever had a policy as to at what point you would go into single member districts in contrast to your larger multi-member districts?

A No, I don't know that the -- the state as a political entity has not had any guidelines, no.

Q You don't know that the state has ever taken the position that once a county reaches, say, a million population, that it is at that point where that county should be divided?

A No, I don't think they have taken that position. If they have taken it, it has been without my knowledge.

Q The Attorney General did not advise you along those lines?

A Are you telling me that the Attorney General of Texas in the past has taken the position that when a county reaches a million population, it must be divided?

Q No, no, I am just simply asking you whether he ever advised you of that.

A No, he did not advise.

Q Do you recall whether Speaker Mutscher brought this up in any way?

A No.

Q You further indicated that it was your opinion that Mr. Calvert was in favor of multi-member districts for the major counties?

A Yes, that's what my views were.

Q Did he ever express this to you?

A He was quoted in the paper to that effect.

Q Of course, we don't want to rely too much on the papers, do we? I was wondering whether or not he had ever actually so indicated to you.

A I don't know that Mr. Calvert ever said, "I am positively committed to at large representation and wouldn't change for anything in the world." I don't know that he ever put it that way, that positive, but in our conversation it was very clear to me that he was in favor of at large representation.

Q Well, you indicated in your testimony that philosophically, you were inclined and still are, towards single member districts.

A I am.

Q But that the way you assessed the feelings of the board, you felt that Mutscher and Calvert were going to go for multi-member?

A That's right.

Q And you and Armstrong were going to be for single member, with Mr. Martin apparently undecided, and I was just wondering on what basis you concluded that Mr. Calvert was in favor of multi-member, apart from reading it in the newspapers.

A In discussing it with Mr. Calvert, I came to this determination, and he asked questions, attended the Commission hearings.

Q Did Mr. Calvert ever indicate to you that he would rely to a large extent on your judgment on this issue?

A Mr. Calvert did not speak to this particular issue. Mr. Calvert from time to time has talked to Crawford and me and told the Attorney General that -- he is chairman of the Commission, and me being the Lieutenant Governor, and speaking about senatorial redistricting now, he did tell me this. I was first familiar with senatorial redistricting being the present -- I don't know about House redistricting, that -- he didn't indicate to me that he was going to rely on me any more than he was going to be on his own judgment.

Q I think based on newspaper stories -- and there again you can correct me if I am mistaken, because I certainly don't want to rely on them -- you indicated somewhere down during the course of these considerations that you felt that there was always some pressure in Harris County for single member districts. I think you referred to the fact that they had previously divided it into three mini-districts, as I think, three districts with several representatives in each one.

A Yes.

Q And that you would rather prefer that rather than the board doing that for Dallas and Bexar and other major counties, you would like to see some precedent along those lines established by the legislature.

A What I said was---

Q Am I trying to -- am I quoting you correct?

A What I am saying is that -- what I said was that Harris County had already been divided and we had -- and the precedent was, and we were probably going to divide it again. Rather than divide it on congressional or senatorial or some other political barriers, to go ahead and get individual member districts drawn in Harris County. We were successful in doing that.

In Dallas County and Bexar County and Tarrant County and the other counties, I want to see it done like that; I said that I would like to see the legislature do it.

Q But the fact does remain that the legislature did not do it?

A That's right.

Q And that they did pass an unconstitutional bill and that therefore, under the constitutional amendment, the entire responsibility, whether wisely or not, was placed in Texas---

A Right.
Q ---on the shoulders of this board?
A Right.
Q And you could have assumed that responsibility, which is what you did, except that you decided that you would go along with multi-member in all major counties except for Harris County?
A That's right.

MR. IDAR: I guess that's all.

Questions by Mr. Cunningham:

Q I just have a few questions, Governor Barnes, because I think they have already been covered by Mr. Richards and Mr. Idar. First of all, did you have any discussions with Speaker Mutscher concerning a single member district plan for Dallas County, Texas?
A I told Speaker Mutscher that I wanted single member districts for all the state.
Q Did he---
A If you are talking about Dallas County, we may or may not have had conversation. I don't recall that specific.
Q I am primarily concerned with Dallas County, Texas, and others are more concerned with statewide, Jefferson County, but right now the people I represent

are concerned with Dallas County and single member districts for Dallas County, and this is why I am limiting my questions---

A Okay; fine.

Q ---as to whether or not you discussed it with Speaker Nutcher.

A I do not recall a specific discussion about Dallas County.

Q Okay. Did you have any conversation with Commissioner Armstrong concerning single member districts---

A Yes.

Q ---for Dallas?

A Well, no, again, single member districts for all the state, now.

Q Okay. Well, then, all your conversation with the other Commission members was concerning a single member district for the entire state and not just the -- any one or more particular metropolitan cities?

A That's correct. I talked to Commissioner Armstrong about division along senatorial district lines also.

Q Okay. Was a plan ever presented to you which outlined or divided Dallas County into single member districts?

A Did Dick Reed present one to the -- did Reed or Mauzy

present one to the board?

MR. McDANIEL: I don't know.

A Well, as a member of the board, there may have been, and Mr. Spellings will be able to answer this question for you because he will have more knowledge than I, but whether -- now, I think the college student from Arlington presented one that of course divided all the state into 150 member districts. I don't know the answer to your question, whether I was---

Q Right now you have no personal knowledge -- you do not recall whether or not you ever saw one or one was presented to you as a member of the board---

A I am not saying---

Q ---requiring Dallas---

A I am not saying -- there might have been three or four presented to me as a member of the board. I am not trying to evade your question. I can find out for you whether it was presented. I don't know whether Oscar Mauzy presented a plan. The one hearing I missed was when he put on his major testimony. I don't know whether Oscar Mauzy presented a plan or not.

Q Are you aware of the number of blacks that are -- that reside in Dallas County, Texas?

A No, not by specific number, but about 12 per cent of the voting population; am I right?
Q I think that the 1970 Census will show that it is better than 16 per cent.
A Better than 16 per cent?
Q And that this 16 per cent is concentrated into forty-four census tracts, where in 33, 85 per cent of those are black. Did you know that, sir?
A No, I didn't.
Q Are you aware of the cost figure for a black running at large in Dallas County, Texas?
A I am sure the cost figure would be the same for black or white or brown running at large, and I am not exactly, but I know it's a costly---
Q Affair?
A Yes.
Q And it would be considerably less if an individual ran from a single member district than if he ran at large?
A I think under normal circumstances, that is a correct assumption.
Q Are you aware that there have been blacks who have attempted to run at large that were not on the ticket -- in other words, the regular 15-man ticket -- and have lost? Are you aware---

A That was the question I asked a while ago. I was not familiar with how many blacks had attempted to run for legislative spots in Dallas County. Of course—

Q Well, were you aware that at least one had run in 1963 on the — as a Democrat but not on the ticket, and lost; did you know this, sir?

A No, I didn't know that. How many other times has that happened?

Q Twice. In other words, there have been two that have run not on the ticket, and each case, they have lost. And are you aware that the only way that a black can run in Dallas County and be elected is that he be a part of the team or slate, as they call it?

A Well, no, I am not aware of that, and I am not going to argue that with you because that may or may not be true, but I know in Harris County, in Houston, for instance, that that argument was made, and then we saw a City Councilman run against the slate, so to speak, run against an incumbent City Councilman, and this black Councilman — the black candidate was elected citywide in Houston, so I really think you are talking about the personality of individual elections. I am not disputing your fact but — the fact that you are just making but I say it's still

a question of political judgment.

Q Okay, and probably my final question: If you had talked with Speaker Mutscher and he had indicated to you that he would vote for single member districts statewide, and particularly Dallas County, Texas, would your vote have been different?

A My vote was consistent on -- if individual member districts had been put to a vote, just said "Are you for single member districts?", I would have voted for it every time. I want to make that clear now, the circumstances we didn't get, but I wish that Speaker Mutscher and the House had drawn individual member districts during the regular session, and certainly, I wish that Speaker Mutscher had supported individual member districts.

MR. CUNNINGHAM: Okay.

Questions by Mr. Steele:

Q Mr. Barnes, I am Cleo Steele.

A Yes.

Q Representing intervenors in the Tyler case. I represent a group of blacks in Dallas County, and we are interested primarily in House reapportionment.

A Can I ask you a question?

Q Yes.

A Distinguish the group of people you represent, how they differ from---

Q Well, actually, I shouldn't have let Cunningham get ahead of me, because he and I represent some of the same interests. I represent Thelma Washington et al., and he is with a group of black elected officials but the questions will be along the same line; I will try to---

A Is it safe to assume that you represent the people and he represents the politicians, then?

Q That's about right.

MR. CUNNINGHAM: First time anybody ever said that.

Q Talking about him getting ahead of me there, I will have to eliminate some portions that he has already gotten them out of the way. I need to generalize with you a little bit first.

A Okay.

Q How long have you been in politics, running for office?

A Eleven years now.

Q Eleven years. All right. And you indicated that you are fairly familiar with the black community of Dallas, so to speak, that you are aware of the number of blacks there, generally?

A Yes, generally. Not near as familiar as I want to become.
Q All right. And you don't know exactly how many blacks there would be there, then---
A No.
Q ---numerically?
A Well, your co-counsel before said 15 or 16 per cent.
Q 15 or 16 per cent.
A Yes.
Q All right. How about Chicanos, or Mexican Americans, are you familiar with their strength?
A I believe about 5 or 6 per cent in Dallas County.
Q All right. In the process of running for office, have you ever had occasion to study in any depth the racial makeup of Dallas County and where these races are located in attempts to get their support in an election?
A Yes. Well, yes, I have not necessarily studied exactly where they are geographically from that standpoint, but I have worked very hard to merit the support of the black and brown Texans in Dallas County.
Q Okay. And you have indicated the reason that Harris County got the single member district plan, as they did, was because of the overwhelming request or

support for it?

A Well, yes, and another point too. Harris County was already divided into districts, not individual member districts, but they had been already electing people on a district basis. Speaker Mutscher even supported dividing Harris County.

Q All right; and you also indicated that the reason Dallas County was not considered for single member districts was because of the overwhelming--

A Well, now, they were considered. I think the reason Dallas County didn't get individual member districts, the votes were not there for individual member districts for the rest of the state. Dallas County was not separated. I understand that you, representing clients, you are attempting to separate. What I am saying is Dallas, Tarrant, Bexar and the others in the state were not separated. Harris County drew the distinction of being separated because they had by a previous legislature, had already been divided, and even in the unconstitutional bill that the House passed, they did divide Harris County into something less than multi-member representation.

Q All right. Would you say that the reason Dallas County and the other larger metropolitan systems that now have multi-member districts got those multi-member

districts or plan was approved continuing the multi-member districts in those areas because of the fact that you received what we are calling overwhelming support for multi-member districts?

A Well, now, Mr. Calvert, Speaker Mutscher, and General Martin will have to answer that question as far as they are concerned.

Q As far as you are concerned?

A Well, no, Certainly I was influenced by the citizens of Dallas County as an elected public official should be; even though that the majority that contacted me felt that way, I have not changed my position philosophically, and I would like to go back to Dallas County and Bexar County and Tarrant County and try to convince those people they are wrong. But I didn't have time to debate the issue with them. I guess just to be a hundred per cent candid, in the twenty days we had -- and it really wasn't twenty days; we are down to a ten-day decision -- I didn't have time to debate the issue. We had to get the job done.

Q All right. Well---

A And certainly public views and expressions of interest from those counties had influence on me as a public official.

Q All right. Well, I am just trying to ascertain whether or not this overwhelming support that we are talking about is in fact a large number of interested citizens are contacting you or if this really is just a few calls you may have had.

A Well, now, I didn't have three or four thousand letters or calls from Dallas County, no.

Q All right. I can understand that you may have had---

A You had -- first of all---

Q ---a large number of calls from Harris County because I can see that they really wanted the single district plan.

A You had both daily newspapers in Dallas County endorsing at large representation.

Q All right. In the process of approving or assisting in drafting a plan, were you in contact with any black elected officials in Dallas County, Representative Holmes or Dr. Conrad or George Allen or any other black business man or people in an influential position?

A Oh, I have to say that Mr. Holmes -- and I did not receive his call; that was a breakdown in communication. I did not receive his call and he tried -- he did try to contact me, and I am very sorry that I did not get a chance to talk to Mr. Holmes. I did not

know he was calling me.

Q So you were not in contact with Mr. Holmes or other---

A No. If you are asking me if I sought out Dr. Conrad and Mr. Allen and Representative Holmes, I did not, and it was not a matter of me neglecting those people. It was just a matter of reacting to -- I was just getting so many people contacting me, I didn't take the initiative to contact anybody, black, white or brown---

Q I am not---

A ---in Texas.

Q I am not asking you if you necessarily contacted them. I am trying to see if they contacted you or---

A As far as a letter from Dr. Conrad or George Allen, I may or may not have had -- I will be happy to look in my files to see.

Q All right. Now, were you in contact with black citizens generally of perhaps lesser consequence than would be Representative Holmes?

A I have got -- I hope to have many black friends in Dallas County, but I could have gotten letters from some black people in Dallas County and just -- and not knowing them, I would not know what their color of their skin was just from the letter.

Q All right. So that other than what you may have

read in the papers or -- well, did you read anything in the papers as to what blacks would desire as pertained to single member or multi-member districts?

A I read statements that---

Q Did you have any input as to what blacks would wish to have there?

A Yes, I had some input. I can't -- I really can't tell you how much I had or what type of gauge, but you know, I might not have been contacted by that many black people because they -- if they felt strongly about individual member districts, because they knew I was for them.

I mean Speaker Mutscher and Crawford Martin and Mr. Calvert, they might have gotten more mail than Mr. Armstrong and I did, because we both declared ourselves publicly in the paper.

Q All right. In the process of putting together the statewide plan, do you know whether or not at any point in drafting it, whether you or your staff or the Attorney General's office or what have you, there was consideration given to black voting groupings or black housing areas; in other words, in drawing the plan did you look to see whether or not you might be drawing the lines in such a manner that you cut through racial groupings or---

A Well, in Harris County I am sure the staff probably gave some consideration to this. I don't know. You will have to ask the staff that worked on lines. You see, Dallas County, with at large representation, letting them run at large, there was not consideration given to that because---

Q Well, not particularly Dallas County. I was just wondering if there was consideration given to racial groupings, considering a statewide plan.

A Well, in Harris County there may or may not have been. That is a question the staff will have to answer. But with the at large -- with most of the black citizens living in the urban areas in the other metropolitan counties running at large, I would say that there was not a great---

Q All right. Now, in situations where you were going to leave the multi-member districts in existence, was there consideration given to the effect this would have on blacks to have to elect their representative at large or the consideration of black political aspirants who would have to run at large, and the economic consequences?

A Well, I think everyone was aware of what at large representation meant versus individual member representation.

Q (Talks to co-counsel.) Okay. It seems that a question should be asked again. In leaving in certain metropolitan areas the multi-member district situation, was there consideration of the fact that black political aspirants would have to run at large and the economic burden is put on the black candidates, and was there consideration given to the fact that blacks in choosing representatives, would not likely, due to their inferior voting strength in a situation like that, would not likely be able to get two to three candidates elected?

A Well, I think that it is going to have to be proven that at large representation discriminates against a black's chances of being elected to the Texas House of Representatives from Dallas, and---

Q Right. That's what we are fixing to do.

A I know, but no one has proven that to me, now. Philosophically, I concur with your argument; I concur with your argument about the financial burden that it places on black and white and brown and everybody. I mean I would like to decrease the cost of running for public -- for the House of Representatives. I think individual member districts do that. But it is not clear in my mind that it discriminates against a black man wanting to run any more than it

discriminates against a white man wanting to run.

Q All right. Now, I am looking at two situations. One -- well, in the first place, we have got a recent court decision and recent law which preclude in drawing apportionment lines intentionally -- well, we will say intentionally diluting racial voting strengths and certain other minority political groupings. Assuming this to be true, in drawing the lines for Texas I need to know if the various commissions and the various parties having input in the drawing of plans considered these racial and minority political grouping factors when they drew those lines.

MR. McDANIEL: I think it might be helpful to define your term "dilute." What do you mean by "dilute"?

Q All right. Let's leave out "dilute," then, and let's just go faithfully. In drawing the plans was there consideration on the one hand given to minority groupings, you know, whether they cut through the groupings or not, or whether they purposely left the groupings together, was there consideration to minority groupings in drawing the plans statewide on the one hand and in leaving multi-member district situations in certain areas, was there consideration

given to minority groupings as far as the expenses go and from the standpoint of citizens having to elect from a wide range of candidates and having to expect representation from a candidate or from an elected official who was not necessarily voted in by them? So I am simply asking you even if you didn't give this consideration in talking with your fellows and in speaking with the Attorney General et cetera et cetera, did you see any consideration given to these factors; did you detect anything other than numerical -- you know, just drawing it so that so many people in a certain district and this sort of thing?

A Well, again, let me say I think that in the rural counties, in drawing the lines in rural counties, it would be very difficult to give considerations to racial groupings in redistricting rural Texas; I mean you have got South Texas districts; I am sure we've got some South Texas districts that have got 60 or 70 per cent Mexican American population. But I don't know in grouping South Texas counties together that we give consideration to what percentage of the counties were Mexican American and what were Anglo. I didn't give any consideration to this, so I think you are talking about -- you are talking about the

individual member districts, and like I said, I want the staff to answer the questions as far as Harris County is concerned, about how much -- I asked the question of my staff maybe that you didn't draw these lines in Harris County in individual member districts to dilute brown or black voting strength, and Mr. Spellings' answer to me was "Absolutely not."

Q Right. Now -- and I am simply asking even in those rural districts that you are talking about now where you've got the single member districts, in drawing the lines were you cautious in any way, did you note the attempt on the part of the various people having influence to keep those lines so that they didn't cut through certain of these---

A Well, you've got to keep in mind that we were---

Q ---Mexican groupings and so forth?

A We were under order from the Texas Supreme Court not to cross a county line.

Q Uh huh.

A Unless we could justify it. Now, I have got to say in all candor to you that I think we tried to draw a bill as fair as possible, but there was not an instance where we went up and divided Harrison County, for instance, and said we ought to take 10 per cent of the black population out of Harrison County and

put it in with Panola or Rusk County to have a fair racial grouping, no. He didn't carry it that far.

Q All right. Are you familiar with Dallas County politics---

A Vaguely.

Q ---for twenty years or so back?

A I am not a student of the political history of Dallas County, no, I am really not.

Q Do you know how many blacks have been elected to the State Legislature from Dallas County in---

A I served with two blacks from Dallas County, Mr. Lochridge and Mr. Holmes. I know you have a black City Councilman, I know you have a black school board member.

Q Now, the two that you served with, do you know whether or not there have been others elected from Dallas County in the State Legislature?

A Not in the past ten years, because I have been in the legislature then.

Q Were Dallas County given, apportioned so that they were on a single member basis, do you think that there would have been more than two blacks serving in the Texas Legislature?

A I can't really answer that. I mean I don't know. I could draw the -- you might could say if you set out

to draw lines to elect more, but now I believe someone else here today, when I exercised my right to ask people asking me questions, to ask them questions, I asked a question which asked how many had run. Okay. And I believe if I am right, there have been four that have run and two have been elected. That's fifty per cent. I mean, you know, I could draw that comparison---

Q Do you think that---

A ---and say, well, that's really not fair and---

Q Do you think that if Dallas were drawn on a single member basis, that there would be more than four that ran, that would have run?

A I would think so; I would think so. But again, you all are going to have to prove that in this lawsuit.

Q All right. In the process of studying Dallas's makeup, in your attempts to win public office, have you become at all familiar with the social, economic and educational problems that blacks are facing in Dallas County? They are probably similar to other places but---

A I think there are some very serious economic and educational problems that minority groups face in Texas.

Q And are you aware of, oh, let's say the school

desegregation problems blacks are having in Dallas County currently?

A No, not more than just newspaper education that I receive.

Q I think it was shown in a recent desegregation case that blacks are receiving an inferior education in Dallas County through the public schools in general, especially -- well, because they were in what we call black schools, that the races were to a great extent separated in schools. Are you aware of the fact that Dallas is currently having an open housing ordinance dispute?

A Yes, I am aware of it.

Q And have you been aware of certain discrepancies such as the Negro Day at Fair Park that was recently cut out here a few years back, and certain things as that?

A No, I am not -- I wasn't aware of the Negro Day in Fair Park.

Q Or whatever -- all right. Considering the peculiar problems the blacks have there in Dallas County, would you not think that the single member districts for apportionment purposes would better serve black citizens of Dallas County?

A I think single member districts would beter serve all

people in Texas.

Q I knew that was coming. All right. Finally, and just based on your experiences in running for public office, how much money -- taking me, for instance, just out of law school and all, I decide I want to run for the House of Representatives -- how much would it take me to run at large in Dallas County?

A I don't have any idea. I mean I am not trying to -- but it would cost you a lot more money to run at large than it would from an individual member district, I assume, unless you are much better known than what the average man is who started to practice law. You are obviously good looking and articulate, but you are going to have to have money to get elected.

Q All right. Now, from the economic point of view, running at large for a black in Dallas County would greatly limit the number of people, black people that could run, wouldn't you think?

A Now, are you talking about because of money or are you talking about because of the prejudice---

Q Especially because of money. I think there would be very few blacks in Dallas County who could afford to run at large.

A Well, I would say---

Q There would be a lot more if there were single members.

A That might be true of all people in Dallas County, black, white or brown, as far as the expense of running for office.

Q All right. According to the 1970 census, blacks composed 25 per cent of the total population in Dallas, Dallas County.

A What per cent?

Q Twenty-five per cent.

A Really?

Q According to that reading.

MR. McDANIEL: What is this, now?

MR. GREENING: We are going to mark everything, now.

Q Wait a minute; let me see what -- 25 per cent of the City of Dallas.

A I was thinking Dallas County.

Q I might have said Dallas County. All right. Twenty-five per cent.

A Yes, you said that.

MR. McDANIEL: What is the total populatio of the City of Dallas, according to that?

(Discussion as to population and getting copy of document made omitted.

Q On a single member district basis, can you give me a guess as to how many districts would be what we could call black?
A I really don't know.
Q Do you imagine we could get at least three black representatives if we had single member districts, assuming these are black districts?
A Assuming the blacks are concentrated in areas and you get good candidates to run.
Q Would you agree that Dallas County voting would reflect block voting on the part of blacks?
A I would have to look at that and see.

MR. STEELE: I have to quit.

Questions by Mr. Greenberg:

Q Governor Barnes, my name is Robert Greenberg, and I represent Plaintiffs Marriott and others in the Dallas lawsuit. About three questions. Can you approximate for us how many plans for redistricting the House of Representatives were submitted to you for examination?
A I do not know the exact number. Several plans.
Q Would it be fair to say, Governor Barnes, that you weighed all of the plans that were submitted to you against all the considerations that you have

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heretofore mentioned in your final determination that you would approve and sign the two plans, House and Senate, that were ultimately adopted?

A Well, Mr. Greenberg, if you are saying to me did I get my way and the plans exactly as I wanted them, I would have to say no. If you are asking if I think that the plans that we adopted are fair and constitutional, I would say yes but---

Q All right. That's fine. Now, would you agree that if one person was assigned the task to redistrict the House of Representatives as opposed to five people, necessarily that you could expect a different plan?

A Oh, yes, I would think if you just had one person assigned to draw the redistricting lines, it would be different from five. That's not on only redistricting lines but that's on any piece of legislation the legislature would pass.

Q And in yours---

A It would be true on this lawsuit.

Q In your reasoning behind your desire to have the legislature itself redistrict itself is because in this manner the elected representatives of the people, 150 in the House, 31 in the Senate, that would be part of their job as elected representatives, and

therefore would represent more of the people?

A Yes, I would like to -- that's the reason why I favor that, and I would be for a constitutional amendment that took the lieutenant governor off this commission if they ever had to do it again.

MR. GREENBERG: Thank you, Governor Barnes.

CROSS EXAMINATION

Questions by Mr. Luna:

Q Governor Barnes, my name is Earl Luna, and in this lawsuit I represent the defendant Roy Orr, Chairman of the State Democratic Executive Committee, one of the defendants in this case. In regard to the geography, first of all, of the senatorial districts that you were asked about by Mr. Eason, it was pointed out that had you started at -- somewhere on the south side of Bexar County, that it might have been a mile or two or more closer insofar as compactness is concerned; you recall that question?

A Yes, sir, I recall the question, counsel.

Q Now, in other senatorial districts in Texas, because of the population, isn't it a fact that there are many more miles across some senatorial districts tha are across the one in Bexar County?

A Oh, yes, sir, I would assume that there are probably

five or six congressional districts that have a greater geographic distance across.

Q So then whether we are talking about House districts or Senate districts and the compactness of them, the number of people that reside in a given area or square mile or some other measurement has a lot to do with the geographical area involved in a district, does it not?

A That's correct.

Q And if compactness means some type of symmetrical design, I would like to ask you in that regard whether or not you have had an opportunity to look at the census tracts and the shape of them?

A No, sir, I have not had a chance to look at the census tracts and the shape of them.

Q Well, generally, the census tracts, you are familiar, are irregularly shaped?

A Yes, they are irregularly shaped. That's not to say that I haven't looked at some census tracts, but if you have asked me if I made a study of the geometrical shape of every census tract in Texas, the answer is no. Nor do I plan to.

Q No. I am just asking you whether or not you are aware that they have no particular symmetrical design.

A Yes, I understand.

Q So then when you add a census tract to get some additional people, you necessarily change the design of what you already had?

A That's true.

Q Or if you take out some people where you have too many, by the same token, you change the design?

A That's true.

Q And then if you were talking about just one county, then you have a different problem from drawing districts statewide that must fit into the puzzle within the confines of the lines of the State of Texas?

A That's correct.

Q You have been asked about cost, Governor, of running for election; these days postage, I guess, are higher than at any time in your memory, right?

A Yes, sir.

Q If a candidate chooses, for instance, to do all of his campaigning by mail rather than going out and see the people, he increases the cost considerably, doesn't he?

A I would assume that.

Q On the other hand, in a metropolitan area if he is using the mass news media, there is not any way in using that mass news media to reach only a portion of the people in a county, so far as you know, is

there -- television, newspaper advertising, and so forth?

A That's correct. Using the mass media, you are going to reach an overwhelming majority of the voters.

Q So whatever the cost of campaigning, so far as radio, TV, newspaper in a metropolitan area is concerned, it is going to cost the same amount to run that ad if you are running in a single member district, as if you are running countywide, isn't it?

A Well, it's going to cost the same amount of money for an ad in the daily newspaper or on television, you are correct.

Q Now, there has been testimony here by a former member of the legislature from Dallas County named Bob Johnson. Do you know him?

A Yes, sir, I am familiar with Mr. Johnson.

Q Now, Mr. Johnson? Did you know him when he was in the legislature?

A Yes, sir, I served in the legislature with him.

Q Mr. Johnson has testified that he ran two races for which he could recall his expenses, and one of them he said was eight hundred dollars for the race, and the other one was twenty-two hundred. Now, within that framework of expenses are there many single member districts areas in rural Texas or urban Texas

for that matter, that might expect to spend even more than that?

A Yes, Mr. Luna, I spent more than that getting elected the first time from an individual member district. Of course, I had perhaps a greater number of difficulties to overcome than Mr. Johnson did if he got elected for eight hundred dollars.

Q So then it does depend to some extent on how well known a person is in his district when he starts, as far as name identification and that sort of thing is concerned?

A That's true.

Q And certainly how---

A In some instances being known is more harmful than helpful. Go ahead.

Q Yes, sir. Now, then, that brings me around to my next question. It does make a difference, then, the type of candidate that offers himself for election, does it not?

A That's true.

Q Did you ever hear of Mr. Ed Dicker?

A Yes. Did I ever hear of him or know him?

Q Yes; do you know who he is; do you know that name?

A I have heard the name, yes.

Q In politics?

A Yes.
Q As a member of the legislature from Dallas County in either the late forties or early fifties?
A Yes, early fifties, late forties.
Q Republicans. Now, do you know, for instance, a Republican who was in the legislature named John Lowrance?
A Yes.
Q Fred Agnich?
A Yes.
Q By the way, Fred Agnich is a Republican who is now in the legislature, is he not?
A Yes, sir.
Q Governor, I believe that our testimony here shows, and I wonder if it meets with the facts as you know them, that there was a Republican elected from Dallas County to the legislature in the at large -- under the at large system in the late forties or early fifties, and six or eight more in 1962?
A Yes.
Q Was it six or eight, do you recall?
A It was eight, I believe.
Q And then in a special election thereafter one Republican was elected, and then in a general election, this last election another Republican, that being Mr. Agnich, was elected?

A Yes, sir.

Q Now, there may have been, the testimony shows, maybe another one or two elected in a special election, another Republican who didn't serve, for a total of about ten Republicans having been elected since the war, World War II. Now, out of that two do you recall that at least -- or out of that group of approximately ten, that about two of them have been either indicted for or charged with criminal offenses; do you know anything about that?

A No, I do not.

Q Governor, as far as politics are concerned, is it politically injurious---

MR. RICHARDS: We will stipulate.

Q ---to a party for one of his local members to be charged with a crime, office holder?

A I would think so.

Q And as a matter of fact, in the state now there has been a lot of reflection against Democrats in general because there have been charges against some specifically, has there not?

A Yes, there have been.

Q Now, on the other hand, in 1962 every Republican who was running for the legislature in a contested race did get elected, did he not?

MR. RICHARDS: Are you talking about Dallas County?

Q In Dallas County.

A Yes.

Q Would you say as far as what you know about the black community in Dallas, that Ben Holmes is a reasonably representative and effective -- is a reasonably representative person of the black community and is an effective representative for the black community, as well as the rest of Dallas County?

A I think that Ben Holmes is a very effective representative for all of Dallas County.

Q And he was elected by all of the people of Dallas County, was he not?

A That's correct.

Q And George Allen in Dallas County in running city-wide for City Councilman in the City of Dallas, led the ticket when he was last elected, did he not?

A I am not familiar with the voting pattern. I know that Mr. Allen is an extremely popular man in Dallas County.

Q Incidentally, Mr. Allen is black, isn't he?

A Yes, he is.

Q And Mr. Ben Holmes is black?

A Yes, that's correct.

Q So then the number of black people who are elected in Dallas County would certainly depend on the type black person that offers himself for election, as compared to whoever is running against him, wouldn't it?

A Yes, I would think that would be a safe assumption.

Q As has been stated in the press lately by Dr. Conrad, Dallas County -- or I believe he said Dallas -- is sophisticated enough to elect a black man at large. Do you agree with that?

A Yes, I think it's possible for the City of Dallas or for Dallas County to elect black people at large. But again, that is just an assumption on my part. I have got no---

Q The black population in Dallas County has been growing, has it not?

A Yes, I am informed that 25 per cent of the City of Dallas' population is black.

Q And since we were able to get rid of the poll tax, we have had more active participation from the black community in politics, have we not?

A That's true.

Q And are you aware that at least in the Democratic party a position has already been taken by members of the Democratic party and its officers to advocate

at least three blacks running for different places in the legislature in the next election under the at large system.

A I was not familiar with that fact.

Q About a year or more ago, are you aware that a black community in I believe what is called the Spence area of Dallas, had a problem with wanting a highway that was elevated across the community lowered to ground level because they were afraid that crimes would be committed under that elevated roadway?

A I am familiar with that problem.

Q And are you aware that all of the legislative delegation from Dallas County joined together to help the black community in contacting the Texas Highway Department, and through those contacts, they were eventually successful in getting that highway lowered to ground level for the black people?

MR. RICHARDS: I would suggest that unless the witness has personal knowledge of the contact, it is hearsay you are inquiring of at this time.

MR. LUNA: Well, we have our objections at the time of court -- at the time of trial.

MR. RICHARDS: Well, I put it on record now for you to try to cure it if you knew how, so you would know what the objection is.

A I know that the Highway Department took that action, Mr. Luna. I know that the entire Dallas County delegation was interested in this being done. About the contacts that were made by individual members, I don't know what individual member of the legislature contacted what person, but I know that it was something that the entire delegation was interested in.

Q Now, Governor Barnes, as a member of the legislature and then as Speaker and Lieutenant Governor, have you had occasion time and again to see the entire Dallas delegation working to help whatever problems might need to be worked on at the time insofar as the black and white communities concerned?

A Mr. Luna, I have been quoted publicly in the paper and have said on numerous occasions that I think Dallas County has had an effective urban delegation, legislative delegation, because they have worked together; there has not been as much political infighting within the framework of the delegation as in other urban delegations.

Q They have cooperated and have had really a lot of teamwork, have they not?

A That's true.

Q We have single member districts, of course, in the senate in Dallas County, do we not, Mr. Barnes?

A Yes, that's true.
Q And while we talk about dividing into single member districts might give black representation, let me ask you, first of all, do you remember when all of Dallas County was a senatorial district?
A Yes, I remember that.
Q And a white senator then represented Dallas County, is that right?
A That's true.
Q Then it was divided into single member districts, is that right, sir?
A That's true.
Q Did we get a black?
A No, sir.
Q Are all three of the members of the senate that are wholly within Dallas County at this time white?
A Yes, sir.
Q And then the one who represents a portion of Dallas County and another county is also white, is that right?
A That's correct.
Q I believe that's all, Governor. Thank you, sir. Oh, I do have two more question — one or two or three more I want to ask you. First, are you aware in Dallas County that the City of Dallas elects its

city councilmen at large?
A Yes, I am aware of that.
Q And that the school district, Dallas Independent School District, elects its members at large?
A Yes, I am aware of that.
Q And are you also aware that both the criminal and civil district judges in the judicial districts are elected at large in Dallas County?
A Yes, I am aware of that.
Q And that is true in all other counties that have enough population for more than one judicial district, is it not, sir?
A Yes, I am aware of that.
MR. LINK: Thank you.

REDIRECT EXAMINATION

Questions by Mr. Cunningham:
Q Governor, did you know that the filing fee for a criminal district judge or a civil district judge is six thousand dollars?
A I wasn't aware of the specific amount, but I am aware that it is——
Q And that this is only a filing fee and after that, you have to pay the expenses of running; are you aware of that?

A Yes, I am aware of that.

Q And to correct something that Mr. Luna said, that Councilman George Allen did not receive the highest number of votes, but that Councilwoman Anita Martinez received the highest. Did you know that, sir?

A No, I did not.

Q Okay. Also did you know that Councilman George Allen had the most seniority than any other member of the Council, and was not elected mayor pro tem -- deputy mayor pro tem -- no, mayor pro tem?

A I was aware of that through a newspaper report.

Q Okay. Now, and my last question, Governor Barnes: It has been indicated concerning cost and what it would cost for newsppper ad, for advertisement and the radio, TV and newspeper. If a black was running from a single member district composed of blacks, would he need as much money to run in that district, would he need as much radio or TV coverage to run in that single member district which is composed of blacks, than he would if he ran countywide?

A Well, you are asking me to make an interpretation based on what kind of campaign he ran. If he used the radio and television it would be -- I can see where Mr. Luna's point of it would be just as expensive to buy an ad in the Dallas Morning News or on KVAA, if

you were going to use it. If you got out and knocked on doors, it would be cheaper.

Q Well, are you aware that there are some weekly black publications in Dallas where the advertisement is not expensive as in the daily newspaper, and he could use these forms of -- this media?

A Yes, I am aware of that.

Questions by Mr. Steele:

Q Just a few more questions that were brought to mind by Mr. Luna. You pointed out there that Mr. Ian Holmes is a representative who is a very good representative of all of Dallas County, and you note, of course, that Mr. Holmes is one black elected official of a racial grouping that composes 25 per cent of the 844,000 we just noted in the City of Dallas.

A Yes.

Q Did you also know that Mr. Holmes was the candidate picked to run, he was on the slate, on the ticket, as it is called in Dallas County?

A I am not too sure---

Q And that the reason---

A ---that I knew of that.

Q And that the reason he is the elected official from Dallas County to the House of Representatives is

because of the fact that he ran on the ticket and was picked to run?

A I didn't know that he was picked to run. I knew that after Ben got the nomination he was on the ticket, and I am not going to dispute your word. I didn't know whether he was picked or not.

Q All right. Another point brought to mind, that being that Mr. George Allen serves on the city council there. Let me reiterate, as Mr. Cunningham just did, that Mr. Allen was the person to whom ordinarily the mayor pro tem ship would fall; were you not aware of that?

A No, I was not aware of that. I read the newspaper stories where Councilman Weber nominated him and didn't get the votes.

Q The history of the Dallas City Council would show that anyone in the position he was in at the time would be elected mayor pro tem; the first time in the history of the Dallas City Council a person in that position was not elected to the mayor pro tem ship and he, a black man, happened to be it.

Another thing brought to mind was the Spence community situation where for the first time in Texas history the Texas Highway Department was going to build a highway over a black residential

community area. It was not because of any teamwork on the part of any representatives from Dallas County that the highway was brought to the ground. It may have been due to certain efforts of the teamwork of the black elected officials, Dr. Conrad, Mr. Allen and Mr. Holmes, and the fact that there was a lot of community disturbance to the effect that the highway might be blown down or something to that effect. Were you aware of this?

A I remember hearing about the problem, and I knew a lot of people in Dallas were concerned about it. I did not in my answer to Mr. Luna intend to give anybody credit for it or not credit for it. I just know that the legislative delegation both in the House and Senate were concerned about it.

MR. STEELE: All right. No further questions.

Questions by Mr. Richards:

Q Governor Barnes, I take it that we are not to assume that you consider twenty-two hundred dollars to be a reasonable estimate of cost of conducting a county-wide---

A No.

Q ---fight for the Texas Legislature in Dallas County,

do you?

A No, it's not a reasonable cost for even running in a rural district.

Q Have you or your staff made a calculation in terms of what expenditures are necessary to achieve reasonable name recognition in an urban county in Texas, just the cost?

A No, I really haven't, nor do I know of any study of this type. I would say that it costs -- to my knowledge, it does cost to run in an urban area, though, than it does in a rural area. There is no doubt about it.

Q I am not sure how much you want to assume regarding your familiarity with Dallas County politics, but let me ask you this question.

A I have gotten a pretty good education today.

Q Are you aware of an organization known as the Dallas -- I believe it is called the Dallas Committee for Responsible Government.

MR. CUNNINGHAM: That's right.

Q The DCRG, I believe, is the initials.

A Yes, I am familiar with it.

Q Are you aware of the thirteen legislators, thirteen of the fifteen legislators presently serving in the House from Dallas, were sponsored in the

Democratic Primary by the DCRC in 1968, I guess - '70? When is the primary?

A Seventy.

Q 1970 primary.

A I was familiar that that organization you are speaking of didn't endorse Dick Reed; I don't know who the other one was---

Q Fred Agnich.

A ---Fred Agnich. You had me lost on the two.

Q But other than Reed and Agnich, that organization---

A Yes.

Q ---had run, in effect, the primary campaign of the other -- the Democratic Primary campaign of the other thirteen Dallas County legislators, is that correct?

A That's correct.

MR. RICHARDS: Thank you; that's all I have.

BEN HARRIS

THE STATE OF TEXAS I
COUNTY OF TRAVIS I

Subscribed and sworn to before me, the undersigned authority, on this ____ day of _____ 1972.

Notary Public, Travis County, Texas

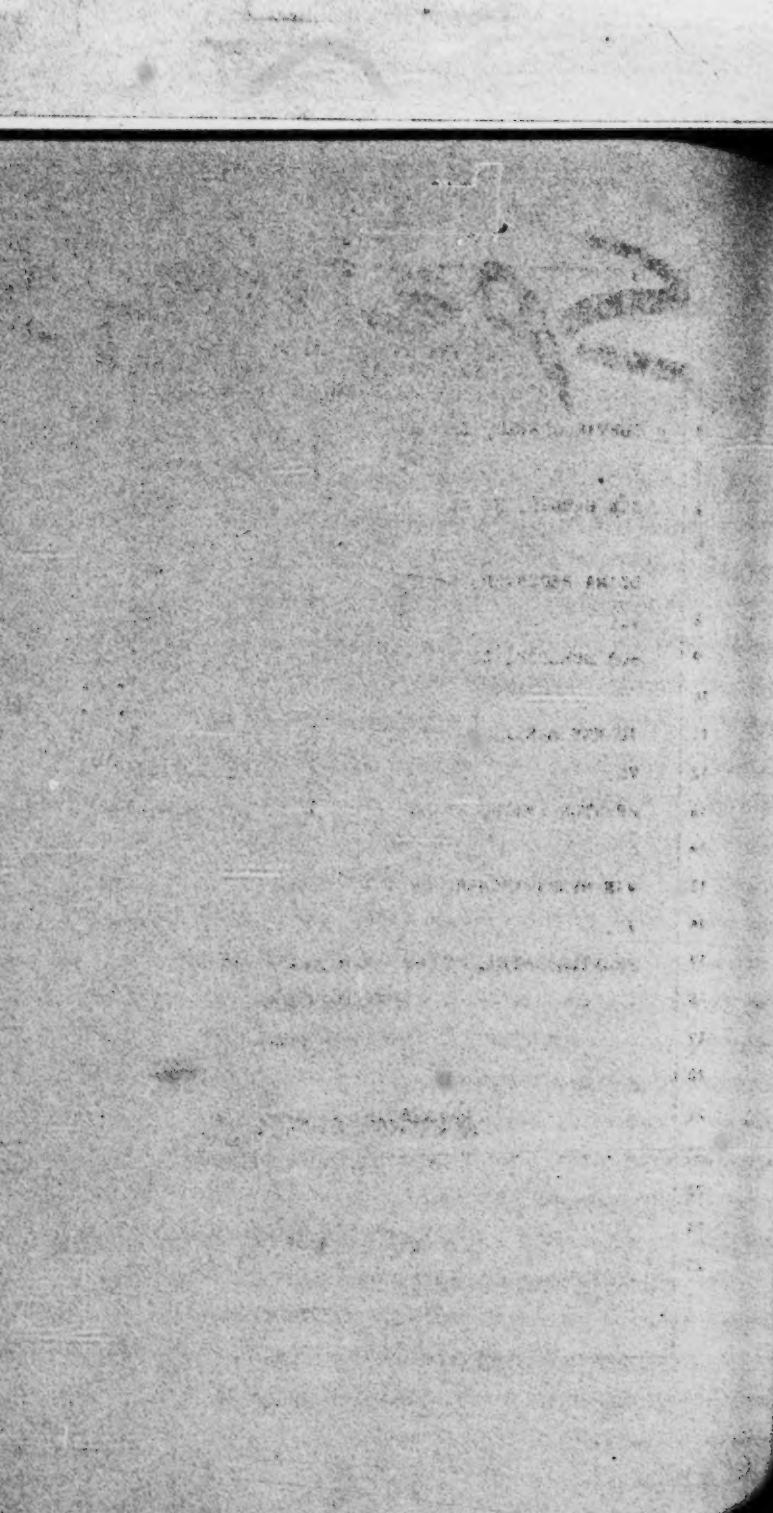
THE STATE OF TEXAS I
COUNTY OF TRAVIS I

I, Opal Locke, a Notary Public duly commissioned and qualified in and for the County of Travis, State of Texas, do hereby certify that pursuant to notice issued and the agreement hereto set out, there came before me on the 29th day of December, 1971, at 11:00 o'clock A.M., at the Supreme Court Building, in the City of Austin, Travis County, Texas, Sam Earnest, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath and his examination reduced to writing by me and under my supervision; and that the deposition is a true record of the testimony given by the witness, as shown by my shorthand notes.

I further certify that I am neither attorney or counsel for nor related to or employed by, any of the parties to the action in which this deposition is taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

In witness whereof, I hereunto set my hand and affix my notarial seal this ____ day of January, 1972.

Opal Locke, Notary Public, Travis County, Texas



Spellings

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL VS. BEN BARNES, ET AL	}	CIVIL ACTION NO. A-71-CA-142
- - -		
DIANA REDESTER, ET AL VS. BOB BULLOCK, ET AL	}	CIVIL ACTION NO. A-71-CA-143
- - -		
JOHNNY HARRIOTT, ET AL VS. PRESTON SMITH, ET AL	}	CIVIL ACTION NO. A-71-CA-144
- - -		
VAN HENRY ARCHER, JR. VS. PRESTON SMITH, ET AL	}	NO. A-71-CA-145

ORAL DEPOSITION OF

ROBERT SPELLINGS

[redacted]

MARIE L. KING
COURT REPORTER
218 COUNTY COURT HOUSE
AUSTIN, TEXAS
PHONE GR 6-5110

APPEARANCES:

ROBERT H. [illegible] — Dallas, Texas

FOR PLAINTIFF HARRIOTT.

ED KNAP, JR. — San Antonio, Texas

FOR INTERVENORS IN THE TYLER CASE.

HAHL LOMA — Dallas, Texas

FOR DEFENDANT CRR.

MICKEY McGUIRE — San Antonio, Texas

NATHAN W. HASCH — San Antonio, Texas

FOR PLAINTIFFS ARCHER, ET AL.

WALTER IRWIN — Dallas, Texas

OLEO STEEN — Dallas, Texas

FOR PLAINTIFF INTERVENORS WASHINGTON, ET AL, IN THE TYLER CASE.

E. BRICE CUNNINGHAM — Dallas, Texas

FOR INTERVENORS CONRAD, ET AL.

STUART HOLKIN — Houston, Texas

FOR PLAINTIFF GRAVES.

SAM McDANIEL & LEWIS JONES — Assistants Attorney General

FOR THE DEFENDANTS.

- -

Austin, Texas

December 30, 1971

DEPOSITION OF ROBERT SPELLINGS, a witness of lawful age, taken on behalf of the Plaintiffs, Diana Regester, et al, in the above entitled causes, pending in the District Court of the United States for the Western District of Texas, Austin Division, pursuant to the notice heretofore issued and the agreement hereinafter set out, before Marie L. King, a notary public in and for Travis County, Texas, at the Supreme Court Building, in the City of Austin, Travis County, Texas, on the 30th day of December, 1971.

- -

(Deposition taken according to Stipulations entered into at the time of the taking of the deposition of Crawford Martin, which are as follows:

MR. RICHARDS: Do you want to consider, Sam, that this is taken by -- I guess it is taken pursuant to notice; inasmuch as General Martin is a defendant, do you -- he is a defendant in some of the cases?

GENERAL MARTIN: I am a defendant in some, and not in some of the others.

MR. RICHARDS: I didn't know whether Sam wanted to treat it just by notice, or how you wanted it.

MR. McDANIEL: I have no objection to treating it as if it were taken by notice, and my only thing is, I do want -- I am not going to waive signature by them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And so we -- do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving General Martin's unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present General Martin's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. McDANIEL: That is correct. That is correct.

MR. LUNA: For the State Chairman, we do not waive our right to cross-examine him at the trial, and in the event he should not be available at trial, we do not then waive the use of this -- if he is available, but is not placed on the witness stand, we don't waive our right to cross-examine him at the trial.

MR. RICHARDS: Well, let me be sure I understand. Suppose that General Martin is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of trial?

MR. LUNA: I reserve the right to examine him in person.

MR. RICHARDS: Well, then, at least you are on notice from me that it is going to be my position that if you have questions to ask General Martin, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are here pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as first-hand testimony.

MR. LUNA: I understand.

MR. [illegible]: All right, Fred.

[illegible] may use the same questions today, but I am simply not waiving any of my rights by participating in this deposition that I didn't originally notice thereby.

MR. [illegible]: As there apparently [illegible] has got a petition, attorneys who are present who ought to put our petition of record in the case [illegible]

[illegible] SPELLINGS,

a witness named in the matter hereinbefore issued, being first duly sworn in the above cause, testified on his oath as follows:

CROSS EXAMINATION

Questions by Mr. Greenberg:

Q. Would you state your name, please?

A Robert Spellings.

Q My name is Robert Greenberg, and I represent the Plaintiffs Burwick and others in the lawsuit from Ealing, attacking the house redistricting. Necessarily, my questions will relate in the main to the House plans. Mr. Spellings, by whom are you employed at the present time?

A The Lieutenant Governor.

Q How long have you been working for the Lieutenant Governor?

A Oh, about five and a half years.

Q Now, do you have an official title, Mr. Spellings?

A Yes, sir.

Q What is that title?

A I am Executive Assistant.

Q Did you hold that office all during the calendar year 1971?

A Yes, sir.

Q Mr. Spellings, were you consulted by the Lieutenant Governor after the creation of the Legislative Redistricting Board in the drawing of maps or plans relating to House districts?

A Yes, sir.

Q And were you consulted by any other members of the Redistricting Board?

A Yes, sir.

Q And who would they have been?

A The Attorney General, the Land Commissioner, the Speaker of the House, and the Comptroller.

Q Now, are you testifying that you had conversations about House plans with each of these individuals?

A Yes, sir, I did.

Q All right. Now, would it be a fair statement to say

that some of these conversations took place immediately before, during or after public meetings of the Board, as well as conversations taking place without respect to any Board meeting?

A Yes, sir, I think that's a fair statement.

Q All right. Did you ever attend a meeting of the Legislative Redistricting Board when it was a closed meeting?

A Yes, sir.

Q How many?

A Only one.

Q And do you know what the purpose of that closed meeting was?

A Yes, sir.

Q What was that?

A It was to discuss the legal procedure that the Board was going to follow or was going to attempt to follow with regard to the mandamus action that had been filed in the Supreme Court.

Q All right; are you an attorney?

A Yes, sir.

Q And licensed to practice in the State of Tenn?

A Yes, sir.

Q All right, sir. Can you tell us when -- strike that. Did you ever prepare a map or a plan, or did you ever

instruct anyone to prepare a map or plan laying out House Districts in the State?

A Yes, sir.

Q All right. Let's go back to the first time -- did you actually prepare any?

A Yes, sir.

Q When did you do that -- approximately, if you know?

A Well, it was on Tuesday preceding the meeting of the Board on Friday, I believe, when the Board formally adopted the plan on the House redistricting.

Q All right. The first time you ever prepared a plan was the Tuesday before the Friday of the adoption of the plan?

A Yes, sir, -- for the House?

Q Yes.

A Yes, sir.

Q Okay. At whose direction did you prepare that plan?

A The Lieutenant Governor's.

Q Did the Lieutenant Governor tell you, "Now, Bob, I want you to draw a House plan, and I want you to put so many people in this District, and draw this District this way," or what did he tell you?

A Told me to draw a plan.

Q Did he give you any guidance as to how to draw the plan?

A Yes, sir, he did.

Q All right. Can you tell us -- did he give you guidelines to use, or was he more specific?

A The only guidelines that he gave me were in response to a question -- in response to questions that I specifically asked him. I asked him whether or not we were going to use single member districts in the urban areas, and he told me, "No, only in Harris County."

Q Now, did you understand his request to you on this Tuesday as a request from a member of the Board, or was he acting on behalf of a majority of the Board -- if you know?

A Well, it would be sheer speculation on my part; I assume that -- he was in constant contact with other members of the Board -- I assume -- of course, he is my immediate employer, but I assume that the request was done in his capacity as a member of the Redistricting Board.

Q Setting aside just a moment, did any other member of the Redistricting Board ever ask you to draw a plan for the House Districts?

A Not to my recollection.

Q Okay. Now, you stated that -- if I am correct, and if I am not, please correct me, sir -- that the

Lieutenant Governor called you in and asked you to prepare a plan for the House of Representatives, and one of the things before you prepared the plan that you asked him was whether you should prepare single member or multi-member districts in the metropolitan area. Did you ask him any other specific questions to which he gave specific responses?

A Well, you have to understand that I am in constant contact with the Lieutenant Governor, so I cannot recall any other specifics. I think there were -- I had in my -- I think the primary thing the Lieutenant Governor wanted done was to draw the most constitutional map that we could.

Now, I had my own opinions as to how that could be carried out, and I think he relied on me with regard to these opinions, and I didn't -- other than the single member district question, I can't recall getting into any other specifics with him.

Q All right. You have indicated that you felt the Lieutenant Governor wanted you to draw a constitutional plan. You have testified that you are a lawyer; you are obviously -- or are you familiar with the series of redistricting cases that the Supreme Court of Texas and the Supreme Court of the United States has ruled on?

A Yes, sir.

Q And have you read these opinions?

A Well, I don't say that I have read all of them; I have read a great many opinions.

Q All right. Based on your drawing of this map that -- the first map, the one that you drew -- what constitutional guidelines, whether you were instructed to follow them or not, did you actually follow or attempt to follow?

A Well, of course some of these guidelines are subject to individual interpretation, and the reason ----

Q Maybe I can ----

A ---- a man will differ -- or we wouldn't have this lawsuit.

Q Maybe I can get more specific: Did you use as one criteria equal population districts?

A Yes, sir.

Q Compactness of districts?

A Yes, sir, I think so.

Q Was it your attempt to draw districts where there was no dilution of minority votes or dilution of minorities, whether they be political, ethnic or racial?

A Yes, sir.

Q All right. Now, in order to draw this map in response to the request of the Lieutenant Governor,

what information did you use; that is, did you use census tract information?

A Yes, sir.

Q Did you use any Department of Commerce Bureau of Census Reports on Location of Concentrations of Blacks or Mexican Americans?

A Well, I don't know. When I say, "I don't know," the Senate Redistricting Committee had a staff; that staff compiled information over, oh, an eight month period, approximately an eight month period. That information was available to me.

Q Well, what I am trying to get at, Mr. Spelling, is that you are sitting in an office and the Lieutenant Governor says, "Draw a House plan," and you determine the single-member - multi-member district problem, and then you get a blank map. Now, what did you use to base your lines?

MR. McDANIEL: I think what he is saying, Counselor, is that he is not sure of the sources of information that the Senate Committee used to prepare the information that he used.

A That's exactly right.

Q In other words, are you saying that you got -- you didn't go to the original source material?

A No, sir.

Q Like census tracts?

A Well, I had census tract maps.

Q All right. Did you also have the information regarding concentrations of blacks or Mexican Americans around the state?

A I did not have any such information in front of me when I drew the map.

Q Okay.

A I think, because of the work that I did on redistricting over an eight month period of time, that I knew generally with regard to some areas where there might be concentration of blacks or Mexican Americans.

Q Mr. Spellings, the request from the Lieutenant Governor to draw a House map, this wasn't your first acquaintanceship with redistricting House or Senate, was it -- you have been involved ----

A With what regard are you using the word "acquaintanceship"?

Q Well, you have been involved in the Legislature's work on redistricting for some period of time, haven't you?

A Well, I was exposed to it during the legislative session; I did not do any actual work during the Legislature. My work was primarily -- my direct involvement was after the Legislature adjourned and

it was determined that the Legislative Redistricting Board was going to drew both the House and the Senate map, and of course the House map wasn't determined until after the lawsuit.

Q All right. Now, in response to this request by Lieutenant Governor Barnes, did you drew the map?

A Yes, sir.

Q All right; state-wide?

A Yes, sir.

Q What did you do with it; who did you physically give it to after you finished -- if you recall?

A Well, if I appear to be slow, let me say that this was a very trying period of time, that particular three or four day period; as I recall, I believe that I made copies of the map and gave it to some staff people in the Attorney General's office.

Q Was the map that you drew the eventual map that was adopted by the Redistricting Board?

A That particular map was not.

Q Did you draw a subsequent map?

A Yes, sir.

Q And when did you draw that?

A Let's see; I think it was Thursday afternoon.

Q At whose request?

A Well, actually at no one's request. I was notified

by the Legislative Council that the one that I had drawn had 151 districts in it; so, therefore, when I received a call from Ken Johnson, the minute I hung up the phone, I went in my office and I knew exactly where I had made my error, and it took me about an hour or an hour and a half to correct my mistake.

Q You didn't need the Lieutenant Governor or any member of the Redistricting Board to tell you that there were 150 members, rather than 151, and as an attorney and as an assistant to the Lieutenant Governor, you knew what to do once you found out you had one extra district?

A Certainly.

Q Is that what you are saying?

A Sure.

Q Okay. Now, can we basically say that, with the elimination of one legislative district, the map was basically the same?

A Yes, sir.

Q Or did it change drastically?

A It resulted in one pairing that was not in the 151 district, but I would say basically, oh, roughly 70 percent of the map was the same, or maybe more -- 75 or 80 percent of the map was the same.

Q Now, were the districts, the single-member districts,

that you had drawn on Tuesday, ----

A Uh-uh.

Q ---- changed any?

A No, sir; I did not draw the single-member districts on Tuesday.

Q Well, whenever you drew it, in response to a request on Tuesday?

A Yes, sir.

Q Now, were the multi-member districts in the metropolitan areas other than Harris County changed?

A Yes, sir; Bexar County.

Q Bexar County was changed?

A Yes, sir.

Q Can you tell us generally in what respect?

A Well, -- not that I think it is very important, but that's not my judgment -- with regard to the 151 map, some census tracts were taken out of South Bexar County to put into a -- to round out another legislative district, and the map that was eventually drawn, the change I made, took some census tracts out of North Bexar County that went into another legislative district.

Q But the basic idea of multi-member districts in the metropolitan areas other than Harris had not been changed?

A Yes, sir, that is correct.

Q All right. Now, after you made the changes and came up -- then did you come up with the finished map, Thursday evening?

A Yes, sir.

Q Now, to whom did you -- did you also make copies of that and deliver it to the Attorney General's staff?

A Yes, sir.

Q Did you deliver it to anybody else?

A No, sir; oh, yes, sir, I did; to Bob Johnson in the Legislative Council. The Council was checking my work and really preparing the finished product.

Q And that plan that you finished, say, late in the day Thursday, was the plan that became the official action of the majority of the Board the next day, whether on the House is concerned?

A Yes, sir.

Q Did you ever meet with the Speaker with regard to drawing the House districts, and I ask you that particularly within reference to whether or not metropolitan areas under them Harris would be single or multi-member districts?

A I don't believe I understand your question.

Q Did you ever have any discussion with the Speaker concerning whether or not metropolitan areas in his

view should be multi-member, single-member, or something in between?

A Not to my recollection. I talked to the Speaker several times, but I can't recall having that discussion with him.

Q The same question with regard to each of the other Board Members?

A I discussed it with Bob Armstrong.

Q And what was his reaction, if any; did he give you some advice as to how he would like it?

A Oh, I think it is public record that Commissioner Armstrong favors single-member districts.

Q Well, that may be, Mr. Spellings, but I mean did he ----

A He did tell me that he favored single-member districts, but he realized the problems we faced with regard to the situation as it existed at that time.

Q You are referring to time limitation?

A There were time limitations and, frankly, I don't think there were the votes on the Board for single-member districts.

Q Did you take a poll?

A No, sir.

Q Of course, in your daily contact ----

A I am giving you my opinion.

Q I understand. In your daily contact with the

Lieutenant Governor, do you feel this was also his opinion, that there weren't enough votes?

A Yes, sir, I think that was his opinion.

Q Did you discuss single-member or multi-member districts in the metropolitan areas with any other member of the Board, like General Martin or Mr. Calvert?

A I discussed it with General Martin, but only -- General Martin did not give me his opinion one way or another. I expressed my view to General Martin that in the event the Board did decide to draw single-member districts throughout the state, it would be a terrific burden for whoever had the eventual responsibility of drawing the map, from a time standpoint. You understand the Board was under a mandamus order and the time limitation was about to run out.

Q Even in view, Mr. Spellings, of the time problem, do you feel that, had there been enough votes on the Board -- and this is obviously a hypothetical question -- that the staff working together could have come up with single-member districts throughout the state?

A Again this is simply my opinion: I think it would have been practically impossible.

Q Because of the time element?

A Yes, sir.

MR. [illegible]: I think that's all. Thank you.

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CROSS EXAMINATION CONTINUED

Questions by Mr. Idar:

Q Mr. Spellings, my name is Ed Idar, Jr., and I am representing a group of Mexican-Americans in the Tyler case. We are also concerned with the House, so most of my questioning will be directed to that particular issue. How old are you -- I don't know if they asked you that?

A Thirty.

Q And you are an attorney?

A Yes, sir.

Q When did you become licensed to practice?

A I took the Bar in October of '67; I was licensed, I believe, sometime in '68, first part of '68.

Q All right. Did you ever -- were you in private practice before you came on with the Lieutenant Governor, or were you already with the staff, or what?

A I was already with his staff.

Q I see. You never have actually practiced law then?

A Well, I have practiced some law, very limited.

Q Okay. You say you attended one closed meeting of the Board?

A Yes, sir.

Q And this apparently was for the purpose of discussing the legal procedure that the Board was going to take

pursuant to the emergency action of the Texas Supreme Court, was this after the Court had issued the emergency or prior to the action of the Court?

A I don't recall.

Q Do you recall what action the Board took at this particular meeting?

A No, sir, I don't recall what action -- I don't think they actually took any action; I think they discussed what the situation was.

Q And do you recall how many days this would have been prior to the deadline by which the Board was going to go out of office as an official body, sir?

A No, sir, I do not.

Q Can you estimate the time element -- 20 or 30 days?

A I would -- I really don't know -- my guess would be probably a couple of weeks.

Q Is it my understanding that from the time the Texas Supreme Court set aside the House plan that had been adopted by the Regular Session to the deadline by which the Board, the constitutional deadline by which the Board, was going to go out of office, there was approximately 23 days?

A It would be easy to get that information; I don't have it in my head.

MR. McKINNEY: Are you particularly wanting

to inquire into these things of this witness, or would you like for me to furnish the information which you may be seeking?

MR. IDAR: Can we stipulate it was 23 days?

MR. McDANIEL: No, but I can tell you what the situation was, if you would like for me to do that, and what the meeting was about and how the deadline came about.

MR. IDAR: All right; if you want to. I would like to clear that up.

MR. McDANIEL: All right. As you know, the Senate failed to pass a Senate apportionment bill, and the Board came into being and was in existence for the purpose of Senate reapportionment. The suit on House apportionment was decided by the Supreme Court of Texas during this same period of time, and the Supreme Court of Texas held the House bill that the Legislature had passed to be unconstitutional.

At that point the Board met over here one morning to decide what position they would take on whether or not to reapportion the House.

Now, the question revolved around the fact that the Legislature had acted. There is a case that is cited in the Craddock case from California, in which the California Supreme Court had held in

interpreting a constitutional provision very similar to ours that because the California Legislature had acted, although they had acted unconstitutional, that nevertheless the redistricting board in California did not have jurisdiction, and it would take a special session of the legislature to come back in and draw the plan.

The board decided that they would refuse to reapportion and would preclude a mandamus suit, so that the Supreme Court of Texas could interpret our constitutional provision. The mandamus ---

MR. [illegible]: I think all of us are familiar with the terms.

MR. McDANIEL: But he wants to know how ---

MR. IDAR: I never have got this background firmly in mind.

MR. McDANIEL: All right. The mandamus action was brought, as you know, and the Supreme Court issued the mandamus.

MR. IDAR: Do you know on what date?

MR. McDANIEL: No, but that's where the 23 day limit came from. When the mandamus was issued, ordering the board to reapportion the State, they had 23 days to do it in.

MR. IDAR: All right.

MR. McDANIEL: Before they went out of existence.

Q And it was that meeting that he has spoken about that you attended?

A Yes, sir.

Q Okay. Now, you indicated that you prepared a House map on Tuesday preceding the meeting of the Board on Friday when the Board adopted the House Redistricting Bill, the one that was finally adopted?

A Yes, sir.

Q I don't have the exact date in here; when was that, October the ----

MR. EASON: The House?

MR. IDAR: Yes.

MR. EASON: October 22.

Q That's when the House Bill was adopted, October 22?

A Yes, sir.

Q And the preceding Tuesday is when you drew up this first map that you told us about?

A Yes, sir.

Q At the time that you used that particular map, did you start from scratch, or did you have all the maps already available to you -- I am trying to determine how much of a job you had to do to prepare that map.

A I started from scratch with a blank map.

Q And you had to redistrict the entire state?

A Yes, sir.

Q I see.

A It was difficult.

Q Now, I can appreciate that. Now, when did you start that -- you say you finished the map on Tuesday -- when did you actually start working on it?

A Well, I actually did not finish the map until Wednesday morning.

Q Well, all right.

A I started drawing the map -- to the best of my recollection, I started drawing around 5:00 o'clock Tuesday afternoon, and I worked from about 5:00 o'clock Tuesday afternoon until about 2:00 o'clock Wednesday morning.

Q I see.

A And I was beginning to see spots, and called it a night, and started again; and I actually completed the State Plan on Wednesday morning, and I would just guess it was around 10:00 or 10:30 in the morning.

Q What process did you use, the mechanical processes that you actually used -- you say you started with a blank map; did the map have the population figures by counties?

A Yes, sir.

Q I see. And you just started jiggling around, figuring around -- you knew more or less what the size of the individual single-member district should be -- right -- by dividing the State into the number of House seats?

A Yes, sir, I knew what the exact number was, if you could theoretically draw 150 exact districts.

Q Now, you didn't have to concern yourself too much with big decisions, because apparently the decisions had been made that they were going to get outlying multi-member districts; right?

A In drawing that map I didn't concern myself at all with the urban areas.

Q Okay.

A I am sorry; with the exception that there was some surplus in Tarrant County and some surplus in Harris County and some surplus in Bexar County that went into other districts.

Q I see. Now, what about Harris County, though; did you draw single-member districts during this 24-hour period, more or less?

A No, sir.

Q Of Harris County?

A No, sir.

Q Or did you already have a map for Harris County?

A No, sir.

Q With the finished product that you finished on Wednesday morning, did it contain single-member districts for Harris County?

A No, sir.

Q Or did it contain the rest of the state?

A Yes, sir.

Q Well, now, you further testified that after you drew that first plan you made some copies of it and turned it over to a number of people, including the Legislative Council.

A Yes, sir.

Q And then they came back and told you, "Look, you have 151 districts," so in an hour and a half you rectified that error; are you trying to tell us that at that time you still didn't have a map of Harris County showing single-member districts?

A No, sir, I think I did when they caught the error. The Harris County map was drawn Wednesday evening, as I recall.

Q By you?

A Yes, sir.

Q So in addition to drawing the rest of the state, you also drew the Harris County map on Wednesday evening?

A Yes, sir.

Q And there again on Harris County did you start from

scratch with a blank map of the city?

A Yes, sir.

Q Or of the county?

A Yes, sir, it was a census tract map with population per census tract.

Q All right. So what it boils down to really -- when did you say you started -- on Tuesday -- what hour -- on Tuesday morning?

A No, Tuesday evening; I would estimate 5:00 o'clock.

Q Between 5:00 o'clock on Tuesday afternoon and what time on Wednesday night did you complete your work?

A Didn't conclude it Wednesday night; I don't think it was concluded until sometime Thursday.

Q All right.

A As I recall, the map was not delivered to the Legislative Council until Thursday.

Q Sometime Thursday morning?

A I think it was -- early afternoon, as I recall.

Q Okay. So between approximately Tuesday afternoon at 5:00 p.m. until Thursday early afternoon, you redistricted the entire state including Harris County with single-member districts, starting from scratch?

A Yes, sir.

Q Did you have any help in doing this work?

A Yes, sir.

Q How many people helped you?

A Well, when you say "help" -- you know, if I had some questions about a particular area, you know, I could pick up the phone and call whoever I wanted to get the question from, but the actual physical help, I really only had one person.

Q Well, that's what I was trying to get at, the actual help that you had in looking at each county and looking at the census tracts, and in figuring out where to draw your lines for the different districts; that's what I had in mind. You and one other person did all this work during the time we indicated; is that correct?

A Well, I would say me and one other person did the bulk of the work.

Q Well, now then ----

A You understand there was a full staff of the Legislative Council working on the map also.

Q But you have told us that you did most of the work, starting with a blank map.

A Yes, sir.

Q And you did have the help of another person?

A Yes, sir.

Q Did you farm out some of this to the Legislative Council; did you call them and tell them, "Look, why

don't you draw the districts in the western part of the state," and call somebody else and tell them, "Will you draw the districts in the northern part of the state for me"?

A No, sir, I did not do that.

Q So that actually you and this other person basically did ----

A Well, I will give you an example: In Taylor County, where Abilene is,you had enough population in Taylor County for one legislative district; there was a surplus that was going to go with three other counties.

Q Yes.

A Now, there was obviously a decision to be made about how Taylor County is going to be divided or split. With regard to that particular county, I asked the Legislative Council,in the map that was passed by the House and the Legislature, I asked them how they did it there, and I got them to pull it out and we looked at it, and I said, "It looks very good to me; it looks fine." They created a core district that was compact, so I told Johnny Potter to use that. I actually didn't draw the lines in Taylor County.

Q In other words, you relied on work that had been done previously by the Council ----

A With regard to that particular instance, yes, sir, I

did.

Q All right. On how many other instances -- I realize I may be pressing your memory too much -- the best you can answer us, how much of this type of help did you get from the Legislative Council? How many other districts did you have to call them about and have them give you some guidance based on prior data they had already gathered or maps they had already drawn?

A Well, I think probably I discussed most of the areas where a county had enough for one district and the surplus had to go some place else.

Q All right. So with that kind of help then, which was readily available through the Legislative Council and their staff, you were able to do this job from about 5:00 o'clock on Tuesday afternoon until sometime early afternoon of the following Thursday?

A I think that's a fair statement.

Q Just a little less than 48 hours; right?

A Well, no, I would not say that's fair, because the Council -- the actual physical preparation of the bill itself, the Board did not adopt the map until 4:00 o'clock Friday afternoon, and you would have to ask Bob Johnson at what exact time it was actually ready. It's my recollection that the thing was totally completed about 2:30 Friday afternoon.

Q Yeah.

A About an hour and a half before the Board actually met.

Q Okay. I was simply talking about the fact that once the map was drawn, the only job that was left, you had to go ahead and number the districts and list the counties in each district, for example; or in Harris County you had to lay out the census tracts that were going to go into the single-member district set.

A Well, of course you would have to check with the Legislative Council, but I think it involved a little bit more than that. They would have to check, for example, the population in every instance. We wanted to be extremely sure that we didn't make any mistakes and leave anybody out.

Q So we will then consider that the additional time element which ran from on or about early afternoon on Thursday when you completed your work to on or about 4:00 o'clock on Friday when the Board finally adopted your plan. So we have another 24 hours; roughly, about three days alltold. All right; so that then, assuming that the Board -- this is going to be a hypothetical question -- assuming that the Board on, say, some six or eight -- let's say some eight or nine days prior to the deadline had decided to give

the major cities single-member districts, that would have allowed another three or four days to do the necessary work to do that, wouldn't it have?

A Mr. Idar, the House map was not the only thing that they had to do. The Senate map was not adopted until one week before the House map.

Q All right.

A So there was considerable work with regard to the Senate map, and I think the feeling of the Board was that they wanted to finish the Senate map before they started working on the House map.

Q Well, okay. Let me go on to something else: Now, you say it was Governor Barnes that told you to draw the House plan?

A Yes, sir.

Q The one we are talking about that you started on on Tuesday?

A Yes, sir.

Q And that he didn't actually give you any guidelines; the only guidelines you obtained were simply answers to questions you raised at the time he gave you this job to do? For example, you say you asked him whether or not the metropolitan areas were going to get single-member districts, and he told you, "No, the only one would be Harris County"?

A I believe that's the only specific question I asked him, -- as I recall -- there may have been others; as I said before, there was a lot going on, and I have constant contact with the Lieutenant Governor.

Q Now, you further indicated that you assumed when he told you that only Harris County would have single-member districts -- of course you don't know, -- of course you are speculating on whether he was speaking for the Board or not; that you interpreted this request to come from him in his own capacity as a member of the Board?

A Well, I will stand on what I said before.

Q Well, is that correct?

A Yes, sir, I think so.

Q All right. But you did not inquire from any other Board member as to what their attitude was as to single-member versus multi-member for the major metropolitan areas apart from Harris County?

A Well, as I testified before, I talked to Commissioner Armstrong, who happens to be a good personal friend of mine, and we discussed it at length. I don't believe I asked his opinion, because I knew his opinion.

Q Did you know whether Mr. Martin had made up his mind at that point?

A I never discussed it -- to the best of my recollection, I never asked General Martin, and General Martin never volunteered to me his opinion one way or another.

Q Okay.

A Again I would like to point out that it was at least assumed, and I think I was right in assuming that the Board members were in contact with each other, and I was certainly not privy to all the conversations that the Board members had.

Q Besides the one closed meeting of the Board, did you attend the several public meetings that they had -- I believe they had about four public meetings?

A I was not there throughout the entirety of all meetings. I stayed through the entirety of the meeting in which they adopted the Senate map, and the same with the House map. I was shortly at the other meetings with the exception that I did not go to the meeting where the Lieutenant Governor was not there; I did not go. I say I did not go -- I stuck my head in the door and then left.

Q So then of your own knowledge, you don't have any information as to what point of time the Board -- I say Board -- officially decided that the metropolitan areas aside from Harris were going to get

multi-member districts?

A I do not know that.

Q If a decision was made, it might have been made between themselves, talking to one another privately; would that be a fair assumption?

A Well, I just don't know; it could have been over the telephone, or ----

Q All right. Incidentally, after you finished -- let me see; you said you finished -- after you corrected the map, because you started out with 151 districts, and you corrected it -- I don't recall when -- you say you did that on Wednesday night, was it?

A Let's see; Tuesday -- I believe it was Wednesday evening.

Q Wednesday evening?

A I would say Wednesday evening, yes, sir.

Q Was that after you had made that correction?

A No; it must have been Thursday; it was Thursday evening -- Thursday evening is when I did it.

Q And then the copies of this map were made available to the Board on Friday?

A No, sir, I think they were made available that evening.

Q Did you make them available?

A I supplied them to some staff people from the Attorney

General's office.

Q How about Mr. Calvert and Mr. Armstrong?

A I was told that the staff people from the Attorney General's office were going personally and individually to see the two Board members.

Q Then the Board met on Friday and adopted it?

A Yes, sir.

Q You indicated that -- when you were asked what constitutional guidelines you followed, you indicated that you used, tried to set up people by population districts by compactness and no dilution of minority votes. Now, what steps did you take in drafting the plan you drafted as to the House to insure there was no dilution of minority votes -- by "minority" I refer specifically to blacks and Mexican Americans, for example.

A Well, I believe you would have to get a little more specific in your question.

Q Well, let's take Jefferson County. Jefferson County is one county that has a rather odd shape, as a result from evidently your records in adjusting this plan. And you know there are concentrations of black population in Jefferson County. After you came up with the plan for Jefferson County, either by yourself or with the help of the Legislative Council, did you sit

back and take a look at it, and assess what the situation was going to be, what effect it was going to have on the black population in Jefferson County?

A Well, I don't understand how I could make that determination.

Q Well, didn't you, to begin with, try to ascertain in what portion, geographical portion, of Jefferson County your black population was concentrated in?

A As I recall, there are two at-large members in Jefferson County.

Q Yeah, but a portion of the county was cut out and assigned to Orange.

A Yes, sir, and I relied on the Council with regard to the census tracts that were I think added to Orange County, and I think some of them went up north, as I recall.

Q Okay; but after the work was completed, like I said, between you and the Council, and you took a portion of Jefferson and assigned it to Orange County, for example, ----

A I did not do that; let me say that.

Q Did you ask -- did you discuss specifically this particular program with the people in the Legislative Council that you were dealing with?

A Well, I think you are assuming that there is a problem;

I don't see any problem.

Q So you did not raise this question then, because in your view there was no problem? I am not trying to confuse you; I just want to know what you did; agreed it, or ----

A I am trying to tell you what I did. To my recollection, I don't recall discussing the black population in Jefferson County.

Q Okay.

A But, like I say, I relied on the Legislative Council with regard to how Jefferson County was divided.

Q Do you recall having any specific discussions with the Lieutenant Governor, or with any member of the Board, or with any member of the staff, whether it be the Attorney General or the Legislative Council staff, as to the overall problem of - constitutional problem - that you need to insure that there is no dilution of minority vote, voting strength, when you are drafting a redistricting plan -- did you have any specific discussions on this point?

A Yes, sir, I did.

Q With whom?

A The Lieutenant Governor.

Q And what was it ----

A Specifically with regard to Harris County.

Q Aside from Harris County, did you discuss any other area with him?

A Well, I certainly may have. I cannot recall a specific right now, a specific other than Harris County. I know the Lieutenant Governor, and I believe the other four members of the Board were interested in drawing the fairest map possible.

Q Did the Board at any time, again for the purpose of making the policy decision whether to go single-member or multi-member in the other metropolitan areas except Harris County, did the Board or any member of that Board ever ask you to assist, say the voting patterns in these different areas -- how particular areas of the city, say an area populated by blacks, might have voted in the past, when they might have had, say, a black running against a white?

A Did any member of the Board ever ask me that -- no, sir, they did not, to my knowledge -- my recollection, they did not.

Q Did any member of the Board,or any member of the Legislative Council staff, or any member of the Attorney General's staff ever ask you to do any work along these lines?

A No, sir, they did not.

Q Did Mr. Hooser work under your guidance?

A Yes, sir.

Q Do you know whether he had maps and other data relating to voting patterns in a number of areas throughout the state?

A Yes, sir.

Q Well, was that information ever used by yourself?

A The only information that I had when I actually drew the map was with regard to the black population in Harris County.

Q And that particular county was given single-member districts?

A Yes, sir.

Q I am trying ----

A There was -- the Redistricting Committee and the staff put together an amazing amount of data that would have been available to me if I had wanted it. I just did not use any of that particular data with the exception, as I recall, with regard to the Harris County situation.

Q Okay. Would it be a fair statement, based on all of the discussions that you had with the Lieutenant Governor, and with Mr. Martin, and with Mr. Johnson, and other members of the Legislative Council staff and the staff of the Attorney General's office, you know during all this period of time as best you can

recall when you all were talking about redistricting, would it be a fair statement to say that everybody just simply assumed that the existing situation in the larger counties aside from Harris which had multi-member districts really created no problem as far as the black or Mexican-American minorities about which you all needed to be concerned?

MR. LUNA: We object to that and will object when this case goes to trial to that question and his answer unless this witness actually has been told or knows what these members thought.

MR. CUNNINGHAM: I want him on standby for trial.

MR. IDAR: That wasn't my question. Let me restate my question, and I think we have agreed that we will reserve our objections to the time of trial, Mr. Luna.

MR. LUNA: I just wanted to give you fair notice.

MR. IDAR: All right.

Q My question was this: Based on the discussions you had during this period of time with Lt. Governor Barnes, with the other members of the Board, with the staff of the Legislative Council, with the staff of

the Attorney General's office -- all of these people that you were working with and consulting with from time to time to get an idea as to how to draw some of these lines; based on your recollection as to what went on in your many conversations and contacts, would it be a fair assumption to say that all of you working on this program simply assumed there was really no problem relating to the situation of the Mexican Americans blacks in the counties under the multi-member system that had been followed previously in all counties except Harris?

Q Well, that's the purpose of this lawsuit; obviously, there is a difference of opinion about single member districts and at-large districts.

Q I realize that.

A And I think every member of the Board was contacted by any number of people who advocated at-large districts or advocated single-member districts.

Q Did you yourself, based on these contacts, assume that there was no problem?

MR. McDANIEL: You are talking about a legal problem?

MR. IDAR: No, no.

Q Did you assume that there was no need to be concerned about the multi-member districts in, say, Dallas and

Bexar Counties; although you had minorities there, they really didn't create much of a problem in determining whether they were going to get a fair shake in the electorial process for the House?

A I didn't assume anything; I followed instructions.

Q You did have census data available that would give you the ethnic or racial breakdown as between blacks and whites, did you not?

A Yes, sir.

Q For every major county in the state, and the census tracts in every county?

A Yes, sir, I think we had it for every major.

Q If it had been necessary, the actual concentration of the black population could have been plotted in every county and in every city?

A I think so, yes, sir.

Q Did you have similar information as to the Mexican Americans?

A I never did see any such information, no, sir. I don't think so.

Q Are you familiar with the fact that that type of information was available in the 1960 Census?

A No, sir, I was not.

Q Is this the first time you hear that it was?

A Well, you know -- if you say it was available, I

guess it was available. I was not aware of it.

Q Okay. So up until I raised the question today, you were not aware of the fact or the possibility that this type of information was available through the 1960 Census?

A No, sir, I was not aware of that.

Q Okay. Now, you made some statement here earlier -- I don't know really at what stage you were referring to, so I would like to clear it up -- you were testifying to the fact you were discussing the single-member versus multi-member district issue with different members of the Board, and that Armstrong was on record favoring single-member districts.

A I did not say that. I said I only discussed it with one member of the Board.

Q I thought you indicated that Commissioner Armstrong also favored single-member districts.

A Well, I guess two members, including Armstrong, but Commissioner Armstrong and the Lieutenant Governor are the only two people, as I recall, that I specifically discussed it with.

Q Okay. Now, you said Martin didn't give you his opinion on this issue. You talked to Martin or had some discussion with Martin, but I think you indicated that he did not give you his opinion at any time

as to whether he was in favor of the single-member or multi-member districts?

A Not to my recollection, he did not.

Q You indicated, however, that at one time you told Martin that from the standpoint of the time element it was going to be rough, or a rough program, to come up with single-member districts for the multiple major cities apart from Harris County; do you recall that?

A Yes, sir.

Q When was that approximately; do you recall?

A Oh, ----

Q Would this have been before Mr. Barnes told you to go ahead and start ----

A Yes, sir, it was.

Q I see; do you recall how many days prior thereto it could have been?

A It would just be strictly a guess; I would just guess approximately a week.

Q About a week before?

A Yes.

Q Okay; and I believe you further stated that had the Board wanted single-member districts for the other metropolitan areas of the state, that the time factor would have made it impossible?

A I did not say "impossible"; I said practically

practically impossible.

Q All right; practically impossible. And that is what you told Mr. Martin?

A Yes, sir.

Q About a week before the Tuesday on which you started drafting the final plan?

A As I said before, it is strictly a guess, but it was definitely before I started drawing the final plan.

Q All right. In view of the fact that you, with the physical help of one other person and the support of the Texas Legislative Council staff, in effect drew a state-wide plan in the period that we have already indicated, two or three days, except for the major cities, did you really think it would have been impossible to do those, had you started a week earlier with clear instructions from the Board to go ahead and draw up single-member districts for every major city?

A In my opinion, it would have been most difficult.

Q How big is the staff of the Texas Legislative Council?

A I have no idea.

Q Have you ever been in their offices?

A Yes, sir, I sure have.

Q Can you tell me whether they retain a contract of, say, sixty people?

A Are you counting secretaries?

Q I am counting all people that are available there to work under Mr. Johnson and to do the work of the Council.

A I think that question would be better directed at Mr. Johnson.

Q Okay. In, I think,another -- let me ask you another thing: When it comes to the guidelines that you say you used, although nobody actually ever told you what to use, apparently from your own experience and what you consider the law to be, and so forth, I think you testified that when Barnes told you to draft the plan, he didn't give you any guidelines other than the questions you raised, which was single-member versus multi-member districts. But then you did recite the guidelines that you tried to follow: equal population, distribution, compactness and no dilution of minority votes. Did you take into consideration what is generally known as community of interest of the given geographical area? I realize that's a very general term, but there are certain factors that go into making up a community of interest, such as housing, the level of the income of the people in the area, the geographical location of the area, the demographic data, such as whether the area

be Mexican-American, black or mixed, did you take community of interest into consideration?

A To the best that I could, with regard to what knowledge I had of community of interest, and again I would like to repeat what you said -- community of interest is a pretty general, subjective kind of thing.

Q Did you resort to any census data that would have reflected or given you some idea of the community of interest in the various areas?

A Well, with regard -- again getting back to Harris County -- with regard to census data on the black population of Harris County, I used that.

Q Well, apart from Harris County, did you use it?

A Well, I had population data for the entire state of course, which I used.

Q Actually, wasn't that your main guideline really, population data; you just wanted to be sure that you came up with a plan that had acceptable deviations on a population basis?

A Well, I think when you are drawing a redistricting map the first thing you have got to consider is population, of course. I wouldn't say it was my main guideline. That's where you start in redistricting, is with population.

MR. IDAR: I believe that is all.

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CROSS EXAMINATION CONTINUED

Questions by Mr. Eason:

Q Mr. Spellings, I am Nathan Eason from San Antonio, and I represent Van Archer and others in a contest against both the Senate and the House redistricting. Mr. Archer is the Chairman of the Bexar County Republican Party. Now, I will apologize in advance; I was a little late getting here, and also I haven't had -- some of this has missed me, so if I do go over things that you have covered, please understand it's because I don't either understand or I didn't hear, or because there is a diversity of interest in some areas between the various plaintiffs in this suit. With these thoughts in mind, I would like to ask you a few questions.

Now, you have stated on several occasions during your interrogation that you were working against a time element which of course increased the pressure, your work load, and possibly the ultimate result of your work. Do you feel in your own mind that the time element that was involved,as a result of the Supreme Court mandate, had an effect on the ultimate plan as adopted in any way?

A What kind of effect?

Q If you had had more time, do you figure that you

could have created a better plan?

A No, sir, I do not.

Q You consider that this is the best possible plan then that you could have created under the circumstances?

A Yes, sir.

Q All right, sir. Then the time element was of no significance, other than the fact it possibly required you to spend a few more hours?

A Mr. Kazen, I have never testified that the time element was of any significance, except with regard to the time element would have been significant had I been instructed to draw single-member districts throughout the state; then I do believe that the time element would have been very significant.

Q Well, you did at one time say it was a trying time; did you mean by that -- what did you mean when you said "a trying time"?

A Well, I think most members of the Legislature -- I am personally acquainted with most members of the Legislature -- they know who I am and what my job is with the Lieutenant Governor, and there were a great many people who had the knowledge or at least felt like the ultimate responsibility of physical labor with this map was going to fall on my shoulders, and I was called at home in the middle of the night,

and of course politicians have a very deep interest in especially their own districts; so people just wanted to give me their opinion about things. I had a number of telephone calls; I had people coming to my office to talk to me -- to see me.

Q So then actually what you meant by "trying time" was that you felt the responsibility of this work, rather than the days and hours time limit?

A Yes, sir; I think that's correct, sir.

Q All right. And you further referred to the time limitation at one time; you were of course then referring to the length of time you had in which to draft this plan, were you not?

A Well, yes, sir. Of course, the Board went out of existence on October 23rd, so ----

Q Now, let's reiterate a little bit more; I believe you did say it would be practically impossible to have drawn in single-member districts in the metropolitan counties other than Harris in the time prescribed; is this correct?

A That is my opinion.

Q How long do you figure that it would have taken you to have done this?

A Well, I simply don't have any idea.

Q Well, now, you did do, as I understand, all the

drafting of the map with the few exceptions that you have pointed out, such as Harris County single-member, and I believe you mentioned that there was a change -- well, Bexar County, apparently this is where you got your 151st legislator; is this correct; in Bexar -- didn't you mention before ----

A No, that's not where I got it.

Q Well, in any event, you did testify you charged out a portion of South Bexar and a portion of the north; is this correct?

A No. What I said was, I believe whoever asked me the question asked me to try to pinpoint what the difference was, and I ----

Q In the two plans.

A In the two plans, other than the 151 members and, as I recall, one of the changes that I made or one of the changes that had to be made to get the 150 involved taking some census tracts out of North Bexar County rather than out of South Bexar County, which I did on the map that had 151 members in it.

Q All right, sir. Now, you say that you have no way of knowing how much longer it would have taken to have drawn in the single-member districts?

A Yes, sir.

Q That's correct?

A Yes, sir; I don't have any way of knowing that.

Q Well, let me ask you this: Is it your opinion now that you could not have possibly drawn in single-member districts in the metropolitan area in the time prescribed?

A No, sir, I am not saying it would have been impossible.

Q Well, you did say, though, it was practically impossible?

A Yes; I again want to say that in my opinion, I think it would have been practically impossible; I am not saying it would have been impossible.

Q All right, sir. Let me ask you this: Do you think that the time element had any effect whatsoever in the fact that the other metropolitan districts wound up in the multi-member districts other than Harris County to any degree?

A I don't know.

Q Did it affect your evaluation or judgment concerning this matter if any you exercised in this particular area?

A Well, again, I followed instructions. I did not have a vote on the Board, and I was not privy to all the conversations of the Board.

Q Did you have an advisory capacity with the Board,

or any member of the Board?

A Certainly I was available to answer any questions that anybody wanted to ask me.

Q And you do work for Lt. Governor Barnes?

A Yes, sir.

Q Did you, in the conduct and scope of your employment, advise concerning any of the matters of where the lines would be drawn, whether it had to do with multi-member, single-member, or Cass County or Brewster County, were you consulted and did you advise regarding these matters?

A I drew the map.

Q Yes, sir. And with certain directions, but a good part of it, as I understand, was your own idea; is this correct -- as to where the lines would be drawn, basically it was your own idea and your own plan; am I correct?

A With regard to what lines now; are you talking about the entire state map?

Q Yes, sir.

A Or are you talking about ----

Q Let's take the entire state map.

A With regard to the entire state map, yes, sir, it was my -- I wouldn't call it an idea, you know -- you sit down and start at one end of the state and

work the state and make the population figures fit.

Q All right, sir. But you did have no decision whatsoever on either multi-member or single-member districts in the metropolitan areas; you did get that advice?

A It was not advice; it was instructions.

Q Instructions, advice; whatever you want to call it.

A There is a difference.

Q All right, sir. Now, you referred to population, working out populationwise, which of course is a primary element, and I know you have answered some of these questions, but did you in any regard concern yourself with racial, ethnic and political beliefs of particular areas in your division of the state into legislative districts?

A Yes, sir.

Q Do you know at this time ----

A Specifically in Harris County.

Q Well, of course, -- yes. Well, did you in Dallas, Bexar, Tarrant, El Paso, Travis and Jefferson?

A There is at-large membership in those areas.

Q Did you consider -- I believe in some of these counties there are areas in which a portion of the county would necessarily have to go into another -- or be incorporated with other counties; is this

correct?

A Yes, sir.

Q Did you -- in that consideration, did you consider racial, ethnic or political affiliations of the people in the metropolitan area that were then incorporated with rural areas?

A It would help me if you could be specific.

Q Well, I just don't know how to be much more specific; if you were carving out a portion ----

A I am talking about with regard to what area you are talking about -- are you talking about the House?

Q Yes, sir, that's all I have discussed. Well, give me an example of one of the metropolitan areas; you take your own example where one of the metropolitan areas was incorporated. You see, most of mine is confined to Bexar County.

A Uh-huh.

Q And the Senatorial Districts that are incorporated in it, so I am not as familiar with this as you, and you did draft the map.

A Yes, sir.

Q So you pick one of the metropolitan areas.

A Let's pick Bexar County.

Q All right. Did you consider them when you added to it, in any particular area where you carved out

part of ----

A Detracted from it.

Q Yes. Did you consider then the racial, ethnic, political affiliations or interests of the people of Bexar County to those of whatever other counties were added for this legislative district in your arrival of that district?

A Well, as I recall in Bexar County, there were only three or four census tracts. The primary consideration of course was that those census tracts had to be contiguous to whichever district it was going into. The census tracts that were added to it I think had a community of interest because, as I recall it, there were areas which were more rural areas in Bexar County, in northern Bexar County. Racial -- I do not believe racial considerations were taken into account, no, sir.

Q Do you think they were taken into account in any of your preparations concerning this map?

A Yes, sir, they were.

Q Give me an example, please.

A Harris County.

Q Well, we are back on the single-member. Give me an example in your multi-member districts.

A Well, again, -- and I am not trying to dodge a

question -- it was not entirely my decision with regard to all of them. I relied on some help and some advice from the Legislative Council in regard to those divisions.

Q But you did supply the lines, didn't you -- or did you?

A Well, not entirely. Again, I get back to the example I used before -- you may not have been here when I used Taylor County as an example.

Q Abilene.

A Abilene. Abilene had enough population for one district, and the surplus had to go some place, and I discussed it with Bob Johnson and Johnny Foster, and they told me that the division that was passed by the House they felt like was a fair division. We took it out, and it looked compact, and that was the one that was adopted.

Q I believe you stated before that you worked with one other person principally in the drafting of this thing; is this correct?

A Principally, yes, sir.

Q And who was that?

A Gregg Hooper.

Q In Mr. Johnson's office, did you work with Mr. Johnson?

A Yes, sir.

Q Now, I realize that you and Mr. Hooser were possibly -- correct me if I am wrong -- were doing work in your own office or wherever.

A Yes, sir.

Q And working together. But then from time to time, as I understand you, you did get in touch with the Legislative Council.

A Yes, sir.

Q Now, what I want to determine, would you customarily get in touch with Mr. Johnson, Mr. Potter, or Mr. Fisher, or whom would you contact over there?

A Either Mr. Johnson or Mr. Potter; either of these two people.

Q But this would be -- if this is correct -- in isolated cases like Taylor County, and something like this?

A Yes, sir.

Q By and large, it was you and Hooser.

A Hooser was working under my instruction.

Q Yes. He was under you -- he was responsible to you and you were responsible to Lt. Governor Barnes; is that correct?

A Yes, sir.

Q And to use his quote: "There the buck ended." All

right. Let me ask you this: Would it be a fair question for me to ask you if the majority of this plan was drawn by you according to what you thought would be acceptable and not dictated by the Board?

A I think generally that's true, yes, sir.

Q All right, sir. Now, you have of course in your files, I presume, the records and memoranda, and the census -- the various things that you needed in the preparation of this map; is this correct?

A No, sir, I don't have them in my files.

Q Where are they?

A They are in an office on the ground floor of the basement that is under Senator Ward's office. It was the office that was used all during the session as the office for the staff of the Senate Redistricting Committee.

Q And under whose jurisdiction and control are those records, so far as you know?

A All of the records, I would say, would be under the jurisdiction and control of Senator Ward.

Q But you were working for Lt. Governor Barnes?

A I was working for Lt. Governor Barnes and I think also for the Board.

Q Oh, yes, I understand that.

A The Legislature was not in session, so Senator Ward

wasn't even in Austin, as far as I know.

Q I would like to turn now to the Senate. On the Senate Redistricting bill -- let's see -- that was passed on the 15th of October, is this correct, one week prior to the legislative?

A I believe that's true; I don't know. It is public record.

Q It is.

A I don't remember the exact date.

Q I will refresh your memory, just so that we don't have to keep looking (handing instrument to witness).

A Yes, sir.

Q Has that got three signatures on it?

A Yes, sir.

Q Well, that will be it, and incidentally that is signed by Mr. Martin, Mr. Barnes and Mr. Calvert; is that correct?

A Yes, sir.

Q Were you present when that was ----

A Yes, sir, the 15th day of October.

Q And this would be the House?

A Yes, sir.

Q On the 22nd day of October; is that correct?

A Yes, sir.

Q That's signed by Mr. Barnes, Mr. Calvert, Mr.

Armstrong and Mr. Martin?

A Yes, sir.

Q Do you know of your own knowledge why the bill was not signed by the other members of the Board, either or both bills?

A Well, I read in the newspaper why they said they didn't sign them.

Q Did either -- did any of them state in your presence why they didn't sign the bills?

A Well, with regard to the Senate Bill, I stood outside the room where they had the meeting, and I listened to both the Speaker and the Land Commissioner give their reasons.

Q All right. What did the Speaker say?

A Roughly, as I recall, he was dissatisfied with the pairings of some of the individual senators, and as I recall he said he was dissatisfied with the way some of the counties ended up in his legislative district.

Q Now, we are talking about the Senate Bill.

A Yes, sir.

Q The two districts he was mainly concerned with, would they be his own home district, which is down in Washington County; was that one of them -- I believe you stated ----

A Well, some of the counties.
Q Yes. I mean the drawing of the district would incorporate different counties.
A Yes.
Q Was the other one Senator Word's district?
A As I recall, it was not Senator Word's district.
Q The 24th?
A Yes, Senator Ratliff's -- no, let's see -- yeah -- no, not the 24th; whichever one that Ratliff and Hightower were paired in; I think he spoke to that one, I am not entirely positive of that, but I think he did.
Q Uh-huh.
A The fact that Senator Ratliff and Senator Hightower were paired -- I think it may be the 29th.
Q Well, I will hand you this map (handing map to witness).
A No, it's the 30th.
Q The 30th?
A Yes, sir. And I think he may have also spoken to the fact that he didn't approve of Waco and Abilene being put in the same senatorial district.
Q What county is Meridian in?
A Bosque County; right there (indicating).
Q Uh-huh -- the 22nd.

A Yes, sir.

Q Now, did you also mainly draft the Senate Redistricting Bill?

A Yes, sir.

Q So that we may avoid a bunch of questions that might be repetitious, did you also do that in conjunction with Mr. Hoover mainly?

A Yes, sir.

Q Would it be fair to say then that you did that mostly -- of course, you did it under the direction of the Board, and did you do it also in conjunction with Mr. Johnson's office? Well, state any differences.

A Well, there was -- the primary difference was that I had known for a considerable length of time, ever since the Legislature adjourned, that the Senate map was going to be drawn by the Redistricting Board. Since the Lieutenant Governor is the presiding officer of the Senate, I feel like I was probably more familiar with the Senate, and the Senate map I think was less difficult to draw. I did not rely nearly as much on any help from the Council in drafting the Senate map. I simply submitted the final map to them, and they of course put it into formal order.

Q When you say put the map into final order, you mean

the bill -- they didn't change the map?

A Yeah, the bill. No, they didn't change the map; they converted the map into a bill is what I mean to say.

Q Let me see if I follow you, so that we will all understand; you had more latitude, would that be fair to say, in your drafting of the Senate bill; you were under less direction?

A Well, it was simply easier to draft the Senate bill.

Q Because you were more familiar with it?

A Well, no, sir, because there were 31 districts instead of 150.

Q Well, you did state, though, of course that you were more familiar with it -- you had been working on it longer, or something like this, didn't you?

A Well, I had known for a long period of time that the Board was going to do it, you see. The Board did not actually -- they were not certain that they were going to have to draw a House map until the Supreme Court issued a mandamus order.

Q Yes, sir. Well, did you get any specific instructions from either Mr. Barnes, the Board, or any other members of the Board in regard to where you drew the lines on the Senate map?

A Well, again I think that the only instructions I

got, that they wanted it to be a very fair map, I think because of the publicity that the bill received which was passed by the Texas House, insofar as it being an unfair map, I think the Board was overly conscious of their work and the fact that they wanted as fair as possible map drawn, and did not want to have to accept such criticism about their work.

Q I see. Then the only direction, if I am correct, that you got from the Board in regard to the drafting of the Senate map was that they wanted it to be a fair map?

A As fair and as legal as possible.

Q As fair and as legal as possible. Now, you are a lawyer?

A Yes, sir.

Q And I believe you stated before that you had a certain familiarity with the various decisions, whether state or federal, concerning constitutional and the legality of division lines, whether it be legislative or senatorial?

A Yes, sir, a general familiarity.

Q All right. Did you to some degree rely on the decisions of Attorney General Martin in this regard, since he is the chief legal officer of the State of

Texas -- did he give you any advice concerning any lines, dictates, concerning the criteria set down by either the State of Texas or the federal courts?

A With regard to which bill, now; the Senate bill?

Q The Senate; we are completely through with the House now.

A Okay; fine. I don't recall that General Martin gave me any instructions. I certainly had conversations with General Martin, and I had numerous conversations with people on General Martin's staff.

Q Well, would that be in regards to the constitutionality and legality, or did it have to do with preference of any type district, or what -- specifically what was the conversation concerning?

A Well, again there were numerous conversations. We discussed -- for example, we discussed the core concept, the concept that the closer to the core of an urban area, the greater the community of interest, and we discussed compactness, and such things as that.

Q But not in regards to where your lines should be drawn, but just in general information to you as to guidelines, still relying on you to come up with the fairest map possible; is that correct?

A Yes, sir, I think so.

Q Did you at any time, while drafting the Senate map, consult with Attorney General Martin concerning any of these issues -- while you were drafting them?

A While I was drafting it?

Q Yes, sir.

A Or before I drafted it?

Q While you were drafting it.

A Not to my recollection, no, sir.

Q How long did it take you to draft this map?

A The Senate map?

Q Yes, sir. Well, 31 districts instead of 170.

A Yes, sir.

Q And you didn't have a single-member - multi-member problem, did you?

A Well, excuse me for being so slow; let me try and recall.

Q Take your time.

A Well, without regard to the urban areas, I would say it took me maybe three hours or less.

Q All right. Now, what about the urban areas?

A Well, of course they took more time, and I worked on them individually, and I would guess probably it took -- I would say a day, maybe a day and a half.

Q Well, I am a little bit at a loss to understand; which did you draw first? I can't understand ---

A The entire state. I divided the entire state -- I divided the entire state into 31 districts, except of course in Harris County, I knew there were going to be five senators in Harris County; in Tarrant County I knew there were going to be two, so I did not make any urban divisions when I first drew the map. I drew the map on Sunday afternoon at my house, by myself.

Q In about three hours.

A Yes, sir. Of course, dividing the urban areas, it took a little bit longer time. I did that at my office, and I think probably I finished Tuesday afternoon sometime.

Q Let me ask you this: I don't suppose Mr. Hosser was with you in the three hours at your home on Sunday afternoon when you drew the map at your house?

A No, sir, he was not.

Q In other words, that would have been totally your project through this point?

A Yes, sir. Let me say this: that I probably have drawn a hundred -- that's too many -- at least fifty senate maps, general maps.

Q Are all those in that same file that we are talking about?

A None of them are, as far as I know.

Q Do you know where they are?

A I tore them up and threw them away. It's kind of like working a jig-saw puzzle, and especially with regard to the Senate map; you know, you don't -- you have time, and you play around with it.

Q All right.

A If you have extra time -- and I played around with it -- I sat in my office ----

Q All right. Next question: The Senate map that you prepared, based on the work you did the Sunday afternoon and the next day and a half or two days, ----

A Yes, sir.

Q ---- as I recall, in your office, was this the final map that was approved by the Board on October 15th?

A Yes, sir.

Q There were no changes made?

A No changes made from when?

Q Well, from the three hours plus the day and a half to two days in your office, was there any change from the time of the final draft of that map by any members of the Board, or any suggested changes, or any -- in other words, this was the final map; is that correct? You understand that -- maybe I haven't worded it clear enough -- do you understand the question?

A Well, let's try it again; word it differently.
Q All right.
A It might be helpful to me.
Q Now, October 15th, do you recall what day of the week this was?
A I believe it was a Friday; I am almost sure it was Friday.
Q All right.
A The 22nd was Friday, so I am sure it was Friday.
Q It would have been. Now, the Sunday you were talking about that you worked on it at home, would that have been the Sunday immediately preceding the 15th?
A Yes, sir.
Q Then of course the Monday and whatever portion of the Tuesday ----
A Were immediately preceding the 15th.
Q All right. Now, this map that you completed on Tuesday afternoon, or whenever it was, with the metropolitan areas in, was this the map that was approved by the Board?
A Yes, sir.
Q And there were no changes, either suggested or discussed, between you and members of the Board after your drafting of this map?
A Well, after the map was drafted, either the Lieutenant

Governor or myself -- and the Lieutenant Governor felt like he had an obligation to the members of the Senate to inform them what their districts were going to be like or how the final map was going to be -- now, when Senator Schwartz found out how his district was going to be, he was very ----

Q Unhappy?

A ---- displeased with the fact that he had one county and, as I recall it was Refugio County, and he did not believe that Refugio County had the same community of interest that the other coastal counties in his district had, and he came to Austin, and I talked with him late into the night, and ----

Q When would that have been, if you recall?

A Oh, it was probably either Wednesday or Thursday night -- probably Wednesday night, I would guess.

Q All right.

A And I ended up making one change, which put Refugio either in Senator Bridges' district or Senator Patterson's district; I don't recall where it ended up; you can look on the map there.

Q And this was at the special instance of Senator Schwartz?

A Yes, sir.

Q Did you check that out with Lt. Governor Barnes?

A Yes, sir.
Q Did you check it out with anybody else?
A No, sir, not to my recollection, I did not.
Q Would it be fair to say that with this one minor change and with the general instructions to be fair and legal, was there any other Board supervision of the senatorial map, or was it entirely your baby?
A Well, I think it would be fair to say I drew the map at the instruction of the Board, but I had -- I will agree with you that I had great latitude.
Q Well, now -- correct me if I am wrong -- but the instructions from the Board, I think you testified to a few minutes ago, was to be as fair as you could be?
A That's right.
Q Was that all the instructions you got?
A I would say that was all the specific instructions I got.
Q Well, what general instructions did you get?
A Well, as I testified before, I discussed some of the legal problems -- I wouldn't really call them problems -- some of the legal direction that the thing should take, the map should take, with some of the staff people in the Attorney General's office.
Q When would that have been -- that was prior to your drafting of the map?

A Yes, sir.

Q All right. Would you mind telling me then what legal guidelines you were instructed to follow in the drafting of the map, -- we are talking about the senatorial map?

A Well, of course the percentage deviation of population -- I try to keep that as low as possible. In the urban areas compactness was considered, community of interest was considered, the core concept was considered; I discussed all of these things with the staff people in the Attorney General's office, and also discussed them with Bob Johnson in the Legislative Council, who is an attorney.

Q And of course you are an attorney?

A Yes, sir.

Q In that mix?

A Well, that's all that I can recall at this time.

Q Well, think about it a minute, and think if there were any other guidelines that you followed, please.

A Well, that's all I can recall at this time.

Q All right. I take it then by my question and your response that you completely ignored racial, ethnic and political guidelines in your drafting of the senatorial map that was approved by the Senate Redistricting Committee of Texas?

A No, sir, I did not completely disregard those things.
Q Well, ----
A It was more important in some areas than other areas.
Q Then you just neglected to point that out when you stated ----
A Yes, sir; I think that's fair.
Q All right. Now, Mr. Spellings, I am going to hand you Texas Senate Districts as enacted October 15, 1971.
A Yes, sir.
Q Is that correct?
A Yes, sir.
Q This is the map that you drafted?
A Yes, sir.
Q I call your special attention to Senatorial Districts 21, 19 and 26, as set out in your map; okay?
A All right, sir.
Q Well, first, I am not trying to get away from this, but I want to ask a couple of questions about the map as a whole, and then we will go to the other.
A All right.
Q Now, was it then your opinion and is it now your opinion that Senatorial District 21 follows the constitutional and legal guidelines as set up by the courts of the United States of America, and of the

State of Texas?

A In my opinion, yes, sir.

Q Do you consider this to be contiguous and compact?

A Yes, sir, I certainly do.

Q Let me ask you this: Are you familiar at all with San Antonio -- just state in your own words how familiar you might be with San Antonio and Bexar County; by this, I mean as to racial, ethnic, and political areas of the city and county?

A Well, I am generally familiar, and I would say I am less familiar now than I was when I drew this map.

Q All right, sir. Now, in this Senatorial District 21, you will note, and of course this is your plan, that it completely circumnavigates or encloses Districts 19 and 26; is this correct?

A Yes, sir.

Q And along its western side it goes around 19 and 26 in Bexar County?

A Yes, sir.

Q And then on into the -- enclosing the northern part of Bexar County -- and back over to the map you turned to a moment ago, even the northeast part of San Antonio, this being a part of it?

A Yes, sir.

Q And you are still of the opinion that this meets

the requirements of contiguity and compactness?

A Yes, sir.

Q All right. Are you familiar with Alamo Heights, Terrell Hills, areas of San Antonio -- the northeast part of San Antonio?

A Generally familiar, yes, sir.

Q Are you familiar with the fact for instance that they have a Republican Justice of Peace or Republican County Commissioner; did you know that?

A No, sir.

Q Did you at any time during your studies or your consultation with the Board or any of its members go into the political or voting records or background of the people of the northeast part of San Antonio or northern part of Bexar County?

A I was aware that there was a Republican concentration there, but even Republicans have to be some place.

Q Thank you very much for your kind advice. I am happy to know that we were considered at least in some light. Did you know they had a Republican County Commissioner and a Republican JP?

A No, sir, I was not aware of this.

Q Do you feel that there is a community of interest between the people, say of Alamo Heights and Terrell Hills, which incidentally they are incorporated towns,

sort of what we call bedroom suburbs, ----

A If you hadn't pointed that out, I was going to.

Q Well, we will get it all just like it is.

A Okay.

Q Would you consider that there is a community of interest between these people basically, who work in and live at least in the metropolitan area of San Antonio and the people of, say, Starr, Jim Hogg, Zapata, Duval Counties?

A Well, the community of interest is a very subjective term, as we pointed out earlier. I would say the people in Terrell Hills or Alamo Heights had just as much community of interest with the people in Laredo as they do with people at Lackland Air Force Base.

Q Well, I don't believe that was my question. Now, I don't think to be an expert in any of these fields, please understand that; I am trying to do my job as an attorney. I suppose most of this area down here which I have been through is ranching -- I am pointing specifically to Starr, Jim Hogg, Zapata, Duval ----

A You suppose that -- I am sorry ----

Q It is supposed to be a question.

A I am sorry.

Q Is this correct?

A Well, I am sure there are some ranching communities

involved in those areas.

Q What else is involved down there?

A Well, I am not familiar with all of the specifics of what is involved in each one of those counties, but in Webb County, for example, I would assume that they do some importing and exporting, and that kind of thing.

Q Mr. Spellings, I asked you specifically in reference to Starr, Jim Hogg, Zapata and Duval.

A Yes, sir.

Q Now, if you know, and surely you studied out certain of these criteria in drawing up this map -- if you know what the general economy of these counties would rely upon, whether it would be agriculture, commerce, ranching, or what?

A I would say it would probably be closer to agriculture than anything else.

Q When you say agriculture, you don't necessarily mean farming, do you?

A Well, I think -- you know, part of that area down there is Valley; I think farming, ranching.

Q That's right. Look on there and see what the population of Zapata County is, sir.

A It's 4,352.

Q And that's a fair-sized county?

A Well, it's one of the smaller counties in Texas.

Q Of the four that I have named, though, it's ....

A It's the smallest in population.

Q All right, sir. And Jim Hogg has four thousand some odd; is this correct?

A 4,854.

Q Well, it would then -- certainly I am not trying to argue with you, but it would almost of necessity be ranching, wouldn't it, if they have four thousand people in the entire county?

A I am just not -- you know, I don't feel like I am qualified to answer that question. I don't live in there -- you know, I am not that familiar with what goes on.

Q Where are you from?

A I am from Fort Worth, that's where I was raised.

Q Yes, sir. Well, did you give any of that any study prior to drafting that map?

A Did I give ----

Q Yes, sir.

A Let me get this clear in my mind. Did I study the economy of each of the counties in Texas before I -- or these particular counties before I drafted the map?

Q We will stick to these ----

A These four counties?

Q We will stick to Senatorial District 21.
A Okay.
Q I am on the guidelines or criteria of community of interest.
A Okay, sir.
Q Maybe I lost you somewhere along the line.
A No, I think I am with you.
Q All right.
A I am trying to answer your question. I did not study those counties with regards to their economy.
Q Did you in any wise take into consideration the community of interest of the lower four or five counties in this district with the community of interest of the people of northeastern San Antonio?
A Let me get it clear in my mind: Did I take into account the community of interest in those four counties with regards to its relation with the community of interest up here in Alamo Heights and Terrell Hills?
Q Yes, sir. And the only reason I am mentioning the four counties, I am taking the bottom portion of the district.
A Yes, sir.
Q As compared with the upper portions of the district. I don't specifically mean any one county. I just want to know whether you considered, since this is

a rather large district, the community of interest from the people that are furthermost in miles from each other in your arrival of your lines in drafting the 21st Senatorial District.

A Well, as I said before, community of interest is a very subjective term; can I ask you what you mean by community of interest -- what your interpretation of community of interest is?

Q Well, that might make this a little too long, but I would take into consideration, in my opinion in answering the question, economic status, employment, the type of revenue that the county receives from whatever source, where the people work, live, what they do for a living, what their economy is based on, their interest in politics and other things; in other words, a common interest between the parties in the election of a member which, based upon this, would represent these people, pointing to the lower portion, and these people here (indicating).

A Okay, sir.

Q All right.

A Now, you understand that in drawing Bexar County and the three Senatorial districts which you have pointed out that you give Bexar County the amount of representation that they are entitled from a population

standpoint. The district -- there were a hundred -- if you give Bexar County two senators populationwise, you have an excess that has got to go some place, and that excess in terms of numbers, as I recall, was around 108,000 people, so those 108,000 have got to go some place.

The community of interest consideration was certainly more prominent in my mind, using the core concept and the idea that the greater -- to the core of an urban area, the greater the community interest, it was more prominent in my mind in drawing Senatorial District 26 and in Senatorial District 19, because those two senatorial districts were entirely within Bexar County.

Then you end up with an excess; the excess has to go some place.

Q Everybody has got to be somewhere?

A Everybody has got to be somewhere, yes, sir.

Q Now, are you through?

A Yes, sir.

Q I am going to repeat my question: Did you take into consideration -- I am going to agree with what you said -- I am not going to disagree with it; let's put it that way -- that you do have an excess of we will say a hundred and ten thousand people in

Bexar County that has got to be somewhere. Did you take into consideration the community of interest of the people that you put in Senatorial District 21, from the northern part of Bexar County, the northeast part of San Antonio, along with the extreme southern portion of District 21 as you drafted it -- did you consider that?

A My primary consideration was the community of interest that was involved within Senatorial District 26 and 19, and was more prominent in my mind with regards to these two senatorial districts.

Now, in considering community of interest specifically between Alamo Heights and Terrell Hills and the four southern counties that you pointed out, I would have to say from a specific standpoint that there may be some people in there who do not have a community of interest with these four southern counties, and I hate to be repetitious, and I am not trying to be contentious, but everybody has got to be some place. There were approximately 108,000 people that had to go into a senatorial district that was comprised mostly of counties outside Bexar County.

Q One more time. Did you in your deliberations in drafting the lines of Senatorial District 21 at any

time consider the community of interest between the people in northeastern San Antonio, north Bexar County, and the extreme southern portion of District 21 as you drafted it?

A Yes, sir, I did.

Q All right. In other words, you took all that into consideration when you drafted this; is that correct?

A Well, when you say "took it into consideration," I was generally familiar with the areas which you have pointed out.

Q Yes, sir. Another question: What was your reason -- I understand your core theory, I believe -- what was your reason for going completely around 19 and 26 instead of coming directly up to and including a portion of 19; instead of going directly around the city to take in the north and northeastern portions?

A Well, also taken into consideration, in drawing this map, were the existing senate lines, and they certainly had some consideration in drawing the map. Quite frankly, I started with Senatorial District 19, and the lines are,as they exist on this map, are relatively close to the old senatorial district lines. I went from Senatorial District 19, then to Senatorial District 26, and what was left over went to Senatorial District 21.

Q Do you know Senator Kothmann or Senator Bernal?
A Yes, sir; I know both of them.
Q Were you approached by either of them concerning their interest in keeping their districts as near intact as they could?
A Yes, sir; I was. I was approached -- when you say "approached" -- Senator Bernal passed a resolution in the Senate; over a period of about eight months there is no telling how many times I discussed senatorial redistricting, not only with Senator Kothmann and Senator Bernal, but,maybe with the exception of Senator Grover, every member of the Senate.
Q Did it affect your reasoning and decision in drafting Senatorial District #1, the fact that you were going to try to protect the interest of Senator Bernal and Senator Kothmann?
A I can honestly say I was relatively, if any, concerned at all with protecting their personal interest.
Q I am not talking -- well, I don't know what you mean by "personal".
A Well, you said "protecting their interest."
Q In their then existing districts.
A Well, yes, sir.
Q Let me ask you this question: Had you come directly into Bexar County from the south, this would have been

a more compact and contiguous district than it is now; is this correct?

A Well, that's your opinion; I don't know.

Q No; I am asking you. In other words, let's look at the map. Assuming that a point ----

A I understand what you are saying. Let's see if we have got the census tract population figures. You know, it would depend on how far you have to go into Bexar County to get 108,000 people.

Q As to compactness -- as to compactness with the lower part of this district?

A Well, you have to understand, -- I didn't go from twenty-one in; I worked from the middle part out.

Q Well, where did you start this?

A I just told you; I started with Senatorial District 19 and Senatorial District 26.

Q Now, let me refresh my memory a little bit. Didn't you tell me when you -- maybe I am confused -- on the senatorial map, didn't you first draft it without the metropolitan areas?

A That's right.

Q Then how did you start with 19 and 26, which are entirely within Bexar County, before you did 21, which is ----

A I said before -- well, maybe I have confused you, --

before I did the urban part of 21. In other words, when I first drew the statewide map on the Sunday, as I am telling you, I drew Senatorial District 21, and I put a "2" inside Bexar County, and then I put a line down here, and I put -- counted 108,000 people on my map, meaning when I get to the urban part of the state that there was going to be 108,000 people that were going to go into Senatorial District 21. Historically, Senatorial District 21 has had population from Bexar County in it.

Q I am a little bit at a loss to understand why you completely went around Ly and Mc and carved that 110,000 people, or whatever amount it was, from the south and northeast portion when the most compact -- I will have to ask you -- I don't know whether you have answered that or not -- but in order to make this district as compact as possible, you would have gone directly in from the south into Bexar County, wouldn't you?

A Not necessarily.

Q Geographically compact -- are you testifying here now that this is more geographically compact by going into the northeast -----

A I am testifying that I would have to -----

Q It seems to me -----

MR. McDANIEL: It seems to me you are becoming a little argumentative, Nathan, because Guadalupe and Medina County both go just about as far north as 21 in Bexar County does so, as far as geographical compactness and distance is concerned, you can say it is six of one and half a dozen of the other, it looks to me like.

MR. LUNA: By agreement of counsel, we have agreed that I will be able to ask a few questions at this time, and then Mr. Mason will continue.

DIRECT EXAMINATION

Questions by Mr. Luna:

Q My name is Earl Luna, and I represent Ray Orr, who is the Chairman of the State Democratic Executive Committee. First of all, there has been an allegation on the part of the plaintiffs that the redistricting is such that it discriminates against Republicans. Now, I want to ask you in particular whether or not you know a member of the Senate named Senator Ike Harris?

A Yes, sir.

Q Do you know what party he belongs to?

A Yes, sir.

Q Political party?

A Yes, sir.

Q What party?

A He is a Republican.

Q Have you had an opportunity to discuss with Senator Harris since this map has been drawn as to whether or not he is pleased with his district?

A Yes, sir.

Q Was he pleased with it?

A Yes, sir.

Q Is he now pleased with it?

A Yes, sir.

Q What county does Senator Harris represent; where is his district?

A Dallas County.

Q In areas such as San Antonio, if you did not have to worry about the one-man - one-vote rule and if you could put San Antonio into three senatorial districts; in other words, if you could just -- by San Antonio, I am talking about Bexar County.

A I understand.

Q If you could just divide it up into three districts wholly within Bexar County,----

A Yes, sir.

Q ---- it would be more compact, and they would be closer to their neighbors, wouldn't they?

A Yes, sir. The community of interest would be greater.
Q All right. Now, is it because of the one-man - one-vote rule that you were following that you had to put 108,000 people out of Bexar County into some other district?
A Yes, sir.
Q So then, when you considered community of interest, you have to also consider it in connection with and perhaps even subject to the one-man - one-vote rule, don't you?
A Well, certainly I think it is secondary to the one-man - one-vote rule.
Q Yes, sir. Now, all of Bexar County is considered South Texas, is it not -- don't you consider Bexar County as South Texas, a part of South Texas?
A Well, yes, sir, I guess so; yes, sir.
Q And generally speaking, South Texans have a community of interest, do they not?
A I certainly feel that they do, yes, sir.
Q In connection with Starr County, Duval County and Webb County, it has been mentioned that it has an agricultural economy. Now, if agricultural includes oil that is produced from the land, we can certainly say it is heavily agricultural, can we not?
A Yes, sir, I know there is a great amount of oil

activity in South Texas.

Q And there are towns where we have storekeepers, retail stores in South Texas; that's right, isn't it?

A Yes, sir.

Q Stores in San Antonio?

A Yes, sir.

Q Banks in South Texas?

A Yes, sir.

Q Banks in San Antonio?

A Yes, sir.

Q So a lot of these folks do some of the same work; is that right?

A Yes, sir.

Q There also has been an allegation or some allegations in one of these suits in regard to allegations that there is discrimination against liberal Democrats. Let me ask you if you know Senator Oscar Mauzy?

A Yes, sir.

Q I don't ask you to put any labels on these folks, but have you understood generally that Senator Mauzy, if he were labeled, would probably be a liberal Democrat to moderate?

A I think Senator Mauzy considers himself a liberal Democrat, and I think most people generally view him as a liberal Democrat.

Q All right. Now, is Senator Mauzy satisfied with his senatorial district, or do you know?

A Yes, sir, I have talked to Senator Mauzy, and he said he was most pleased with it; told me that he was most pleased with it.

Q Now, when you were drawing these lines on the maps, although you have said that you had a great deal of leeway, at the time you were drawing them did you think that the Board had any obligation to adopt whatever you happened to draw, or if the Board was not pleased with your map, would they kick it out and tell either you or somebody else to do some more drawing?

A Well, again I want to emphasize that I was under instruction of the Board and everything that I did was given to the Board for their approval, comment or change, or futher instruction to me, or whatever. I certainly felt like they had no obligation at all; as a matter of fact, I was certain they had no obligation at all to take what I submitted to them. I submitted it as an employee.

Q Yes. So, in drawing these maps, you didn't have any delegation of powers of the Board, or you weren't told that anything you drew that they would adopt, were you?

A No, sir, I never was.

Q And I am sure you had perhaps communications with as many members of the Board perhaps as any non-Board member, wouldn't you say?

A Well, ---

Q If not as much as any non-Board member ---

A I really didn't understand your question.

Q You had communications with members of the Board and staff during all the time the map was going on?

A Some, and before.

Q Did you ever hear anybody say that there should be any kind of effort made to discriminate in the preparation of this map against any person because of race, national origin, religion or political beliefs?

A No, sir, not at all; on the contrary, I was instructed that those things would be considered, and they wanted the map, as I said before, to be as fair as possible.

Q Considering the one-man, one-vote rule and the other legal requirements of the United States Constitution and the United States Supreme Court, and having had an opportunity to have reflected on this map for some months now and heard the opinions of others, are you still of the opinion that this map, insofar as the House of Representatives and the Senate is concerned, is as fair a map as could reasonably be

prepared?

A Yes, sir, I do.

MR. LUNA: Thank you, sir.

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CROSS EXAMINATION RESUMED

Questions by Mr. Eason:

Q I just have two or three more questions: You stated a moment ago that the only change as far as you could recall in the Senate redistricting map was brought about through a meeting between you and Senator Schwartz, I believe, on approximately Wednesday night after you completed on Tuesday; roughly -- I am not holding you to the date, ----

A Yes, sir.

Q ---- in the evening; based upon taking, was it Freeport, or what county was it?

A I believe it was Refugio County.

Q All right; Refugio County; well, look at the map.

A Yes, sir, it was; it was Refugio County.

Q All right. Refugio County out of his district, and I believe you further stated that your reasons for doing this was because of lack of community of interest; is this correct?

A Well, that was Senator Schwartz's view, and certainly I can agree with him on that.

TC

Q Well, obviously you concurred in this ----

A Yes, sir.

Q ---- or you wouldn't have taken it out?

A Yes, sir.

Q Did you get any Board authorization or approval in doing this?

A Well, when I say I took it out, I submitted the change to the Lieutenant Governor, who later submitted it to the Board.

Q So when you submitted the change ----

A In other words, I did not have the authority to arbitrarily make a change. I was an employee who visited with Schwartz and Schwartz giving me his reasons for such a change, and it was easy to agree with him. I then talked to the Lieutenant Governor and suggested that we make such a change, and he agreed to it. And the rest of the Board members were then apprised of it and agreed.

Q Do you recall -- well, let's get to the mechanics of it -- after you had talked to Senator Schwartz that evening, did you then make the change -- I understand that you went through it, Governor Barnes -- but did you first redraft the map or that portion of the map, or just how did you go about arriving at the change to suit Senator Schwartz's opinion?

A Well, I do not recall exactly now what is entailed, but it was just a minor switch of a county, as I recall it, and, like I say, I talked to Senator Schwartz late into the evening, and I think the change was actually submitted to the Board the next morning.

Q All right. You submitted it?

A Yes, sir. I submitted it to the Lieutenant Governor and, as I recall, some of the Attorney General's staff people.

Q Were they together?

A I beg your pardon -- was who together?

A I am just trying to get -- you submitted it to the Lieutenant Governor and then you said you thought some of the Attorney General's staff.

A Well, I am sure some of the Attorney General's staff people, but I don't think this all happened in the same matter of minutes.

Q Tell me just how it did happen; did you walk into the Lieutenant Governor's office and discuss with him the desired change, or did you take a map in there, or just how did this come about?

A Well, as I recall, I went into the Lieutenant Governor's apartment and discussed it with him, and ----

Q The following morning or that night?

A It was the following morning, as I recall, and briefly told him of my conversation with Schwartz and the argument that Schwartz had made, and I told him that I agreed, and -- it was a very simple thing. Like I say, I don't recall now, but it was just a matter maybe of one or two counties, and it was relatively easy to do; I mean, there was nothing to it, and at that point the Lieutenant Governor agreed.

Q Well, did you then get authority from the Lieutenant Governor to go ahead and make the change?

A Yes, sir.

Q At that time?

A Yes, sir.

Q Without any consultation by the rest of the Board?

A Well, you understand this was very informal; the Board did not had a meeting. When the Lieutenant Governor approved of it, I say the Lieutenant Governor gave the change his approval. The rest of the Board members then had to give the change their approval. I did not personally take it to the rest of the Board members.

Q Did they have your memo then?

A Yes, sir, as I recall, they did.

Q They had the map then without the change?

A Well, they had seen the map without the change;

whether or not they actually had one in their possession, I can't testify to that.

Q Well, had they given their approval or not at that time -- now, I don't mean their approval which naturally they had to give formally and under oath, -- but had they given their tacit approval to the map prior to the change?

A I do not know.

Q All right. Then, based upon the report to Governor Barnes in his apartment the next morning, you were advised to make the change for community of interest reasons, removing Refugio County ----

A I was instructed to make the change.

Q Yes, sir. You were given the instruction to make the change of removing Refugio County from Senator Schwartz's district; correct?

A Yes, sir.

Q And you did then forthwith, or when did you make the change physically on the map?

A Well, you are speaking like there was just one map; I must have had a hundred blank maps in my office. It was ----

Q Well, however it was, Mr. Spellings; I don't know, I wasn't there; you tell me how it happened.

A Well, as I recall, the Legislative Council already

had the map, and they were in the process of preparing the bill, and I think -- I just -- well, first of all, the Attorney General, and I don't recall whether the Lieutenant Governor -- whether it was done -- I don't recall just exactly how it was done, but at some point in time that morning I walked down to the Council and just showed them what to do. It was a very simple thing. I assume -- and I think I am correct in my assumption -- that the Lieutenant Governor called the other members of the Board with regard to this small change.

Q. This insignificant -- well, this small change and very simple thing to do, what did you add to Senator Schwartz's district in order to compensate for that Refugio County, which you took out of it?

A. I do not recall.

Q. You don't know know. Do you recall whether or not the county or counties, or whatever portion you added to it; I am sure you then checked out the community of interest of the new county, if it was one, that you supplied to Senator Schwartz ----

A. Well, I am not sure I supplied Senator Schwartz with a new county. I think I may have given him a couple of census tracts out of Harris County; I think that's what I did. You see, you are only dealing with

9,400 people in Refugio. With regard to the Senate map, one of the general rules that I tried to follow was that -- and we had growth patterns -- one of the general rules I tried to follow was that in the areas where there was rapid growth that you under-populated to some extent;in the areas where they were losing population, I over-populated, and it gave you -- as I said before, it is easier to draw 31 districts, but with regard to -- it gives you a great deal more flexibility in playing with numbers, and especially when you are just talking about 9,400 people out of 361,000.

Q Do you recall -- I guess it would show on that map -- what did you then do with Refugio County?

A It went into Senator Bridges' district.

Q What district is that?

A Senatorial District 20.

Q Did you at that time compare community of interest between the people of Refugio County with the balance of that district?

A Did I compare community of interest?

Q Yes, sir.

A Well, I am sure I looked at it, yes, sir; I am sure I considered it.

Q Well, after all, that was the reason for you taking

It was of Senator Schwartz's district, wasn't it?

A Senator Schwartz agreed to Bellaire, and I pushed to agree with his after talking to him, that since his entire district is a central district that runs along the coast, that since Bellaire always lived with a central district, that it did not have a community of interest with other central districts. And, again, community of interest is a very subjective thing; I think you can argue it either way, really.

Q Well, I am only talking ——

A ——depending on which side you are on.

Q Well, I am only talking the guidelines and the criteria that you employed.

A Yes, sir.

Q When you were drafting this map, the reason for removing Refugio County from Senator Schwartz's district was lack of community of interest; is this correct?

A I think that was a primary consideration, yes, sir.

Q Well, were there any others?

A Well, I think Senator Schwartz's strong feeling about it had something to do with it.

Q I imagine it did.

A But I think the primary consideration was the community of interest argument.

Q Did you at this time consult with the senator, whomever it was -- what senator wound up with it?

A Bridges.

Q Did you consult with Senator Bridges concerning the addition of Refugio County to his district?

A I am sure that I did, because I called Senator Bridges to tell him what counties were going to be in his district. I am sure I did.

Q Now, did you take anything out of Senator Bridges' district in order to compensate for this single matter of adding Refugio County, which is nine thousand, four hundred and ninety-some-odd population, did you then have to take something out of his district to make up for this addition?

A No, sir, I don't -- before I made the change, I had Senator Bridges' district under-populated a little bit, and this over-populated it, and taking into consideration, the total consideration, his district is losing population rather than gaining population, so -- like I say, nine thousand people was just a very small amount, and it allowed me to be more flexible. But I did not take anything out of Senator Bridges' district, no, sir.

Q And it is your recollection that you probably got in touch with Senator Bridges about this?

A Yes, sir.

Q But you don't have any independent recollection whether you did or didn't, is that your testimony?

A Yes, sir.

Q Did you consult with the legislator that represents Bufalo County concerning this change?

A No, sir.

Q Or any of the people of Bufalo County?

A No, sir.

Q And you have further testified, I believe, that you had almost sole discretion in the drafting of all the lines setting up the congressional districts as approved by the Reapportioning Board and enacted on October 15, 1971, with this one minor change, under guidelines, the principal one, as I recall your statement -- you correct me if I am wrong -- to be fair and particularly a population equation between the various districts?

A Following the one-man, one-vote guideline, yes, sir.

Q And you, on your own initiative, drafted up the new present Three Senate Districts, as enacted by the Reapportioning Board, ----

A Not on my own initiative; on the instruction of the Lieutenant Governor and the Board.

Q Yes, sir. At their instruction, with the guidelines

to be fair and keeping the population equation as close as you could; these were your principal guidelines; is that correct?

A Yes, sir.

Q And you didn't at any time from the Sunday afternoon at your house where you spent three hours until the final draft of this map, putting in the metropolitan areas, which you completed about Tuesday afternoon in your office, on your own you did not contact, nor were you contacted by the members of the Board relative to the drafting of any of these lines; is that a fair statement?

A Well, I certainly talked to the members of the Board with regard to drawing the lines in the urban areas.

Q All right. Did you talk to them about any of the lines that you drafted in the three hours at home on Sunday afternoon?

A Yes, I am sure I talked to them.

Q While drawing them ----

A Oh, no, sir.

Q ---- or after drawing them?

A I am sure it was after I drew them, and I talked to them before I drew them.

Q But there were no changes in any of these, save and except Senator Schwartz's change down in ----

A The urban areas were put together, you understand, on a piecemeal basis; in other words, San Antonio, we used Bexar County. When I finished Bexar County, I gave copies of that to the Attorney General's staff, and the Attorney General's staff delivered these to the individual members of the Board.

If the individual members of the Board approved, then it went to the Legislative Council to be incorporated into the map. And I used approximate time -- I think all of it was finally completed somewhere into Tuesday.

Q But the only change -- well, I guess "ly" is a rural area, is this correct, even with Galveston in it -- how do you consider this -- is all of Galveston County plus the portions of those other counties, with the possible exception that you think part of Harris might have gone like it with the change, ----

A I know part of Harris did. Well, I am sorry.

Q Go ahead.

A Well, I think what I did was put another census tract from Harris County into ----

Q To compensate for Refugio?

A Yes, sir, but I already had some of Harris County in there, you see.

Q Oh, I see. Now, with this one exception, though,

that was the only change made on the urban -- no, the rural part of your map?

A Yes, sir.

Q And then on Monday and Tuesday until in the afternoon you drafted the metropolitan areas?

A Yes, sir.

Q Did you have any aid, advice, or direction, or instruction concerning the drafting of any of these metropolitan areas? Now, we are talking about Monday and Tuesday prior to the Friday it was accepted.

A Yes, sir, I did.

Q From whom?

A Well, I remember particularly meeting with General Martin and his staff people with regard to Harris County, and talking with them about, again, the core concept, and I think the Board was particularly interested in Harris County, to make sure that there was no discrimination from a racial point of view. So I did get advice and instruction from General Martin and his staff in regard to that and got their approval.

Q Was there any other advice, instruction or direction that you recall that you got in regard to either the metropolitan, urban or rural parts of this map, senatorial districts, prepared by you in this period,

other than the two which you have now mentioned, which would be Harris County on the one hand in the metropolitan areas, and Senator Strauss's district?

A Senator Schwartz's district.

Q Schwartz's; pardon me.

A I got plenty of advice.

Q Senator Strauss is now dead; I am sorry about that; it was before your time.

A No, sir, I didn't know Senator Strauss. I got plenty of advice from individuals who were interested in the senatorial map.

Q Pardon me; I possibly asked the question wrong. Now, I am talking about the period between Sunday noon at home and Tuesday on your final draft, as I understand it, of this map, you did make the change in Senator Schwartz's district -- we have been over that -- and then you met with Attorney General Martin and his staff relative to the Houston-Harris County; now, during that period were there any other instructions, directions, or advice from the Board or their staffs to you relative to this map?

A Yes, sir, I am sure there was. I was in constant contact with the Attorney General's staff.

Q By telephone, personal, or how?

A Personal and telephone.

Q Relative to what?

A I was in constant contact with the Legislative Council.

Q Relative to any changes, or suggested changes, or what?

A No, sir, not relative to any changes; we didn't change anything other than this Senator Schwartz thing.

Q I understand that.

A Just, like I say, relative to drawing the lines. Again I will go back to my example in Harris County, so ----

Q Well, I understood you to say previously that you drew all of these lines?

A Yes, sir, I did.

Q Would you mind telling me what suggestions, or changes, or modifications, or original insertion of districts was supplied to you by the Board?

A I am sorry; I don't understand that question.

Q Mr. Spellings, I know we are all getting a little weary; I have been at it all week. Correct me if I am wrong -- I understood you to say originally that you drafted this whole map?

A Yes, sir, I did.

Q That you had previously worked with the joint

committee, I believe, of the Senate and House, or, anyway, you worked on it prior to even this Board being enacted; is this correct?

A No, sir, that's not true.

Q That's not true. But you did, on your own and without the help of Mosser or anyone else, you did draw this map as it is now approved. The point I am trying to get at, we have seen that there was a change made in the Senator Edwards district and the Harris County senatorial districts when you met with Senator Martin's staff; now, I want to know what, if any, other lines were dictated, advised, directed by members of this Board or their staffs concerning your drafting of this map?

A I don't recall any.

Q All right. One other question: What is your background, training and experience in the field of redistricting?

A Well, I don't know how you get background training in the field of redistricting.

Q I'm not sure I do either, Mr. Spellings, but let me rephrase it. Now, you are a lawyer, you are what -- thirty years old?

A Yes, sir.

Q And you have been working for Lt. Governor Barnes

I think almost during the entire time that you have been licensed to practice law; is that correct?

A During the entire time I have been licensed to practice law.

Q During the entire time, but you had done a little work of practicing some law -- I don't care to get into that.

A All right, sir.

Q But during the time that you have been working for Lt. Governor Barnes, we'll say, how long has that been?

A Since August 1, 1966.

Q All right. What specifically has been your duties on his staff?

A My duties were general -- I would say general until February of 1968. When I say general, I answered correspondence, I ran errands, I did whatever had to be done at the instruction of the Lieutenant Governor or Mr. Glenn Biggs; he was then the Speaker; anyway, Ben Barnes' Executive Assistant. He left in January, '68, and the Lieutenant Governor appointed me Executive Assistant in February, 1968, and from that time until today I have the responsibility of running his office.

Q All right. When did you first work on any type of

redistricting plan?

A Well, I said before that I didn't work on it during the Legislature; that's not true. The first time I ever worked on any redistricting plan to my knowledge was the last twenty-four hours of the Regular Session.

Q Of 1971?

A Of 1971.

Q Which would have been ----

A It was in May, as I recall the latter part of May. And the Conference Committee that was considering the Congressional Redistricting Bill was having difficulties, and it just so happens that Senator Ward was Chairman of the Sub-Committee on the Congressional Bill as well as the Sub-Committee on the Senate Bill, and Senator Jordan was Vice-Chairman of both of these Committees. They were tied up with the problems with the congressional bill, and the Lieutenant Governor told me to try to work with Senator Ward's staff to get a Senate map prepared, so that we could get the map passed by the Legislature.

Q That would have been in May of '71?

A '71, yes, sir. I do not think the Lieutenant Governor -- the Lieutenant Governor tried to do everything he could to see that a map, a Senate map, was

considered by the Texas Legislature, but we just simply ran out of time.

Q Prior to that time, had you ever done any redistricting or drafting of any such plans, or had any studies or experience in this area?

A Well, no, sir. I had never drawn a redistricting map or never worked on a redistricting map. I think the last time the Legislature did any redistricting was in 1965, as I recall, so ----

Q I am just trying to establish what your experience is.

A I know what you are trying to establish.

Q All right. How ----

A There would never have been an opportunity for me to become experienced in it.

Q But you haven't -- you weren't -- correct -- you weren't experienced in it prior to that time?

A I wasn't experienced, in the fact that I had never done any of it, that's right.

Q Well, you weren't experienced in any regard?

A That's right.

Q All right. How long did you work on it at that time -- you said it was right prior to the end of the session?

A Yes, sir, I think it was the last twenty-four hours.

Q All right. Did you do anything on it from that time forward up until you started with the Redistricting Board?

A Well, as I said before, I must have drawn, no telling how many senate maps, and I have had thousands of conversations with people who had an interest in redistricting, and I have sat down and worked with people who wanted -- especially members of the Senate that might come in and have a particular interest in their senatorial district, and say, "Well, look, we can do it this way, or we can do it that way."

Q Well, most of this is what we would call a subjective or personal interest, isn't it?

A Yes, sir.

Q All right. But in the interest of time, you worked on it twenty-four hours prior to the end of the session in May of 1971; you drew all these maps; but I want to know when next you started working on any type of redistricting?

A As soon as the Legislature adjourned from the Regular Session, I, from that point until these maps were adopted, I talked and worked with any number of people regarding redistricting.

Q All right. When you say any number of people, are you talking about elected legislators and senators in

the State of Texas principally?

A No, not principally.

Q Well, who else?

A Well, anybody that was interested in it, anybody that wanted to come to see me about it.

Q People that had an interest in how the state might be redistricted?

A Yes, sir.

Q And you haven't had any -- I know this is -- I don't even know what an expert would be in this field, Mr. Spellings, I will be frank with you -- but you haven't had any special training, background, education or experience in redistricting or the drafting of redistricting bills, maps, plans, other than what you have stated here; is this correct?

A That is correct, but I don't know where you would get such training.

MR. EASON: I believe that's all.

- - - -

Q All right. Well, let's get this sort of agreed in: Compactness, community of interest, and the core concept were factors that you used along with, I presume, one-man - one-vote?

A Yes, sir.

Q You have also mentioned in earlier answers that you had a historical approach in looking at old lines; did you have that in Harris County, as well?

A Well, it was not -- it was considerably more difficult to look at the historical lines in Harris County, because Harris County had grown to the extent that they were now encircled, with the addition of Fort Bend, to five full Senators with the addition of Fort Bend County.

MR. MARTIN: What were they, for the sake of the record, before this last redistricting; how many Senators?

A Well, they had four Senators, and then Senator Schwartz had a small part of Harris County -- they only had four.

MR. MARTIN: That's right.

Q In addition to speaking to members of the Attorney General's staff, what other types of people did you speak to, again about the racial question in Harris County?

Q All right. Well, let's get this sort of sorted in: Compactness, community of interest, and the core concept were factors that you used along with, I presume, one-man - one-vote?

A Yes, sir.

Q You have also mentioned in earlier answers that you had a historical approach in looking at old lines; did you have that in Harris County, as well?

A Well, it was not -- it was considerably more difficult to look at the historical lines in Harris County, because Harris County had grown to the extent that they were now entitled, with the addition of Fort Bend, to five full Senators with the addition of Fort Bend County.

MR. McDANIEL: What were they, for the sake of the record, before this last redistricting; how many Senators?

A Well, they had four Senators, and then Senator Schwartz had a small part of Harris County -- they only had four.

MR. MEHAN: That's right.

Q In addition to speaking to members of the Attorney General's staff, what other types of people did you speak to, again about the racial question in Harris County?

A I talked to anybody that wanted to talk to me.

Q Well, who in particular did you speak to about the racial issue that all of you saw as a point of concern in Harris County?

A I don't recall. I could have -- you know, I don't recall any question.

Q Did you speak to Mr. Bennett Collier of Houston?

A I spoke to Mr. Collier several times.

Q All right. Did you specifically ----

A Yes -- I am not sure I specifically talked to him about the racial ----

Q But you did talk to him about the issue in Harris County?

A Yes, sir, I talked to Mr. Collier; I talked to Sid Hannay; I talked to Pat Brown; I talked to Senator Brooks; I talked to anybody who wanted to talk to me, and they were considerable.

Q Did you speak with Mr. Collier during the time that you were drawing the Harris County lines?

A I would have; I may have -- I don't recall.

Q Did you speak to Mr. Sonny Rosenwell about Harris County lines?

A Yes, sir.

Q Did you speak to him during the time that you were drawing the lines?

A I could have; I don't recall.
Q All right. Did either of these two gentlemen submit a plan to you for Harris County?
A Mr. Collier didn't submit a plan; the Houston Chamber of Commerce submitted a plan; they didn't submit it to me, they submitted it to the Board.
Q All right; what about Mr. Bracewell?
MR. McDANIEL: You say Mr. Collier did not submit a plan?
A No, sir.
MR. McDANIEL: "No, sir," he did not?
A No, sir, he did not submit a plan to me.
Q Do you know if he submitted one to the Board?
A I do not know.
Q Would it have come to you if it had been submitted to the Board?
A Not necessarily.
Q All plans were not funneled to you?
A No, sir.
Q Even though every ----
A They were available to me.
Q All right. Everyone knew you were going to be drawing the lines; is that a correct statement?
A Who is "everyone"?
Q Everyone on the Board?

A Well, I think that is fair to say that everyone on the Board knew that I would eventually have that responsibility.

Q All right.

A But when the Board actually had their first meeting, it was released that the Texas Legislative Council was going to also serve in a staff function for the Board, and I think they may have named Mr. Johnson, Mr. Bob Johnson, as parliamentarian or something, and it was put out and released that anybody having any plans that they wanted to submit should submit them to the Texas Legislative Council. So I think almost all of the plans were submitted to the Legislative Council, and they were available to me if I had wanted them.

Q Did Mr. Braswell submit a plan?

A Well, Mr. Braswell brought me a copy of a plan, the Houston Chamber of Commerce plan.

Q All right. Did that particular plan appear to be similar -- does it appear to be similar to the plan that was ultimately adopted?

A No. Well, there are some similarities.

Q Now, with respect to the question of racial percentages, was there a particular discussion between you and Lt. Governor Barnes about the

percentages of Blacks in the various new Senatorial Districts?

A Yes, sir, there was.

Q All right. Was there a discussion -- or was there some desire to approximate the percentages of Barbara Jordan's old district?

A Well, the Lieutenant-Governor was very concerned that we avoid diluting in any way the representation that the Blacks had, represented by Senator Jordan's district. When he told me -- when I say "we" -- Greg Hooser and myself finished Harris County, the way it eventually is drawn right there. I cannot recall whether these figures are accurate or not, but, as I recall, we totalled up the Black population in what is now Senatorial District 11, and I think it was one-tenth of one per cent more Black than in Senator Jordan's present district.

Q All right. What figures did you use for Senator Jordan's present district, what census information did you use?

A It was something that -- it was information that the staff of the Senate Redistricting Committee had compiled over a period of time.

Q Well, what I mean is, at what point in time did you measure the Black strenght in Senator Jordan's old

district; was it as of 1960 when that census was prepared?

A I don't know.

Q Was it at the time she first ran for office?

MR. McDANIEL: He just said he didn't know. If you want to know, I will tell you; it was 1970.

A I don't know.

Q You do not know?

A I do not know. I told Greg Hosser to determine what the Black population was of Senator Jordan's old district and then to figure out what the Black population was of what is now Senatorial District 11; and, as I recall, the figures came up that Senatorial District 11 was one-tenth of one per cent blacker than Senator Jordan's new senatorial district.

Q All right.

MR. HELKEN: And, Mr. McDaniel, the figures that were used for Senator Jordan's old district were 1970 census figures?

MR. McDANIEL: That is correct.

MR. HELKEN: All right.

MR. McDANIEL: As I understand it.

Q And you do not have personal knowledge of what the sources of the percentages was?

A Well, I certainly would assume that Greg Hosser used

1970 census figures. I can't imagine him using anything else but 1970 census figures.

Q All right. You stated that there was, as you understand it, a one per cent increase, or one-tenth of one per cent increase?

A One-tenth of one per cent increase.

Q Do you have a recollection of the figures, the percentages, that were involved, in addition to the fact you stated there was a tenth of a per cent distinction?

A Well, I think -- and I want to state that I am not at all sure about this, but I think that Senator Jordan's old district had 39.8 per cent Black population, and what is now Senatorial District 11 had 39.9; but, again, I am not at all sure of these figures.

Q And these figures were supplied to you by whom?

A Greg Hooser; I instructed him to make runs for me and determine these figures.

Q Now, moving back to the question of guidelines that you used, let's take, for instance, the question of compactness; I want to show you the Texas Senate Districts as enacted by the Legislative Redistricting Board for Harris County, and ask you if you feel that, for instance, Senate District 13 satisfies

your criteria for compactness. Now, 13 is the one that horseshoes around the entire county?

A Yes, sir. Well, again, with regard to the core concept, you start at the middle and work out. In Harris County there is approximately 1,700,000 people in Harris County. The core itself is roughly 900,000 people. As you can see, we created three core districts in Harris County; I think, with regard to what you refer to as the horseshoe district, it is composed primarily of the satellite cities of Houston proper.

Q All right.

A So, you know, compactness is only one thing to take into consideration.

Q Fine. We will get to the others. My question as to the criteria of compactness for Senate District 13, would you say that it satisfies that?

A When taken into consideration with all of the other things you have to take into consideration in drawing the map, I think it does.

Q Now, with respect to community of interest, are you personally familiar with Harris County?

A Again, only generally.

Q Do you know whether or not there is a substantial set of diverse interests in District 13?

A No, sir, I am not aware that there is.

Q All right. It is your understanding these are primarily satellite cities, and the community of interest would be -- I mean, they would be fairly homogeneous?

A I am sorry; repeat that.

Q You are not aware of a divergence of interests in District 13?

A Well, certainly. Again, community of interest is a very subjective thing, and I am sure that you can pick out some points in there where you might argue that there is not a community of interest.

Q Well, I am asking you for your overall characterization; would you say the interest in 13 are homogeneous, that there is -- you know, are the people homogeneous, for the most part?

A I would say, generally speaking, there is a community of interest with regard to the people in Senatorial District 13.

Q All right. Now, moving to District 15, which you characterize as a core district; would you say again that there is a lack of substantial diversions of interest in that district? And if you are not familiar with the city, Mr. Spellings, let me remind you that the western part of District 15 is River

Cuba.

A Uh-huh.

Q And the easternmost part would be a Black ghetto area.

MR. McDANIEL: I object to the characterization of both this area and River Oaks; I know that much about Houston. And I also object to the interrogator testifying to what this is.

MR. MALKIN: Well, all right.

MR. McDANIEL: And I want it clearly reflected in the record.

Q If you understand it to be differently, let me know; how would you characterize the western part of District 15?

A Are you familiar with the core concept, that the closer to the core of an urban area, the greater the community of interest?

Q Well, of course, I am asking the questions now, and my question is ----

A I don't think I can answer your question.

Q My question is, are you familiar with the nature of the people who live in the western part of District 15?

A I am generally familiar with all of Harris County and that particular area.

Q All right. How would you characterize those people generally?
A Again I'll say I am generally familiar.
Q All right; how would you characterize those people generally?
A I am sure there are all different kinds of people.
Q All right. Would River Oaks fall within this western part?
A I think that probably what is called River Oaks is in the western part.
Q Do you understand River Oaks to be a very affluent area in Harris County -- "Yes" or "No"?
A I would say it is.
Q All right. Let's talk about the eastern part; do you know this part to be a substantially Black ghetto area?
A I know there are other census tracts in that eastern part that are predominantly Black, yes, sir.
Q All right. Would you say, sir, that there is a substantial or a general community of interest between the eastern part of District 15 and the western part?
A Well, again, community of interest is very subjective; I think you can argue both ways.
Q Well, how would you argue it; what would you say?

Is your answer that there is or is not a community of interest between the people that live in the western part and the people that live in the eastern part?

A I hate to be arbitrary; what is your definition of "community of interest"?

Q Well, you have been using the term; we have all been using it. I am simply asking you, based upon any definition which you can give, is there a substantial community of interest between the people in the west and the people in the east of District 15, by any criteria you care to use -- median income, housing, voting pattern -- anything?

MR. McDANIEL: Are you limiting yourself just to these?

MR. HELKEN: At the moment.

MR. McDANIEL: Well, that's a rather severe restriction.

MR. HELKEN: Well, you can, of course, ask the question ----

MR. McDANIEL: You can make any argument that you want to about what is a community of interest; the fact that they are all interested in downtown Houston, the fact that some of them may receive welfare, while the others pay for it, may

make them vitally interested in the thing.

MR. HELKIN: Well, of course, that's something you can develop by your questions.

MR. McDANIEL: It is an unfair question, it seems to me.

THE REPORTER: I can't get both of you talking at once.

Q My question is ----

A Some people who live in the eastern part of that district work in the western part.

Q All right. All I am asking you, sir, is to characterize as best you can whether or not you feel there is a substantial community of interest between the people in the west and the people in the east of District 15?

A I don't think I can answer that question, the way you have it phrased -- do I think there is a substantial community of interest between ----

Q You stated -- just let me do it a different way -- you have stated that one of the considerations that you were instructed to consider, ----

A Uh-huh.

Q ---- and one you did make was that of community of interest. All right; so, using your term however you were using it, ----

A I did not start off with the primary consideration being community of interest.

Q All right; what was your primary consideration other than the one-man - one-vote?

A Okay; with regard to Harris County, I think the next consideration was to draw the lines from the middle out.

Q All right. But, again, ----

A And the next consideration was to try to avoid as much as possible any dilution of the Blacks.

Q All right.

A Dilution of strength of the Blacks.

Q In any event, using -- we are just going down each of these, and we are now on community of interest, which is one of the criteria.

A All right, sir.

Q Does State Senatorial District 13 have the people in the west and the people in the east united in a community of interest; do they share an interest, and if they do, what interests are they?

A I would have to say I am not that specifically knowledgeable enough about these areas to be able to answer that question.

Q That's fair enough. And would your answer be the same with respect to the other State Senatorial

Districts in Harris County?

A I think so, yes, sir.

Q All right. So you are stating that you do not know whether or not they have a community of interest?

A I didn't say that.

Q You don't have the knowledge to give us the answer at this time?

A I don't have the knowledge to tell you specifically what community of interest they may or may not have.

Q Well, but I am asking you whether or not ----

A You start again with the assumption that people who live in the core area of an urban district have a community of interest.

Q All right. Well, let's take that.

A Despite whether they are Black, White, Republican, Democrat, or whatever.

Q All right. Let's take that for a start.

A There is obviously a very little community of interest between a man that lives in Richland Hills and makes $500,000 a year and a guy who is Black, and the guy making $500,000 a year is Republican, and the Black who is working as a janitor, who makes $200.00 a month and is a Democrat. You know, depending again on what your definition of "community of interest" is, I am willing to say that these two examples of

people, they probably share very little, if any, community of interest.

MR. CHRISTENSEN: Why don't you let that be the definition.

Q Well, are you saying that you are not familiar with the median income levels in this district?

A I would say ----

Q Generally speaking; we are not talking about figures.

A ---- generally that I could make a pretty rough guess and probably be pretty close.

Q All right; what would your guess be ----

A I work under the assumptions that have been spoken to in court cases, that the closer to the core, the greater the community of interest is.

Q All right.

MR. MCDANIEL: Without trying to figure out what they meant by it.

A Without trying to figure out what they meant by it.

Q All right. And, of course, you are now characterizing 15, 6 and 11 as core districts; is that right?

A Yes, sir. I would say they are core districts, in that some of them touch the boundaries of Harris County.

Q Okay. And so that whatever community of interest exists, optimally the people in these three districts

would be -- would have all of the characteristics of core dwellers, whatever that is?

A I'll go along with that.

Q All right. So we have got compactness, which you characterized, as far as Harris County, as being satisfying, and we have got community of interest, which you have stated you do not have the particular knowledge to really comment intelligently on, the community of interest within the particular State Districts, Senatorial Districts, ----

MR. McDANIEL: That's not a fair characterization.

A I do not think I said that.

Q All right. Let's go back and characterize each of those State Senatorial Districts.

A Let me try to say again what I thought I just said before. I said I work on the assumption that the closer you are to the core, the greater the community of interest is; and I started from the middle and worked out. I do not have specific knowledge with regard to what you are trying to pin me down to with regard to community of interest. I am only generally familiar with Harris County.

Q All right. Did you have available to you the 1970 census information, which would cover not only Black,

White or non-White percentages, but also such things as dwelling characteristics, plumbing characteristics, and that type of thing; was that available to you if you wanted to use it?

A I am sure I could have gotten it somewhere.

Q All right. So, to test your assumption as to the nearness to the core, ----

MR. McDANIEL: I am not sure he could have as to plumbing characteristics. If that's in the census, I don't know about it, and I don't want this witness' admission that he might have gotten it somewhere besides from the State. I don't know whether you got plumbing information or not, and I am not sure that that has any bearing on apportionment, anyway.

Q But you could have tested your assumption, at least in part, by looking at census information, could you not -- census tract information?

A I got my assumption from court cases, and I tried to follow whatever legal guidelines I had available to me.

Q All right. Now, would another characteristic or another desirable characteristic of districts be fairly straight lines, fairly straight boundaries of the districts, based upon your experience?

A Well, I have never seen anyone or read any case where it says that straight lines is any kind of a criteria.

Q All right. Have you ever read Bandilion vs. Lightfoot?

A No, sir, I don't think I have.

Q All right.

A I may have, but I think it speaks more to compactness than it does to straight lines; but, again, I am not familiar with the case.

Q But you do have -- I mean, you are considered expert enough by the State to draw both the House and the Senate Redistricting maps; would you, based upon your experience, feel that straight lines would be a desirable ----

MR. McDANIEL: That's not a fair characterization, either; nobody has held him out as an expert. It just befell his task to do it.

Q Based upon your experience, would you feel that straight lines would be a desirable characteristic of districts, something to strive for?

A Oh, I think if I could draw straight lines and make it look good, I think certainly that would be something you would strive for. But, especially when you get into these urban areas, I am sure you have

noticed the census tracts are in the most unbelievable kind of shapes that I have ever seen. How in the world you could draw straight lines and use the census tracts in all odd shapes, I don't know.

Q All right. Were you ever supplied with Black or White - non-White percentages by anyone besides the sources that you have testified to? Were you ever given any percentages by Lt. Governor Barnes?

A No, sir, not to my knowledge, I wasn't.

Q Were you ever given any by Mr. Collier?

A Not to my recollection, no, sir.

Q Mr. Bracewell?

A Not to my recollection, no, sir.

Q All right. Did you have the Houston Chamber of Commerce map before you ----

A Oh, I am sorry; Mr. Bracewell's map, that was the Houston Chamber of Commerce map, did have a breakdown behind it that showed or that gave the Black population in each of those Senatorial Districts.

Q Okay.

A But it was not drawn out on the map itself; it was just put behind the map in a table form.

Q All right. Did you have that map before you when you drew the Senatorial Districts for Harris County?

A No, sir.

Q So that the similarity, if any, between that map and yours would have been gratuitous?

A Well, I was very familiar with the Houston Chamber of Commerce map, and let me -- the Houston -- the Harris County map was not -- I didn't just sit down and draw it in a matter of minutes or a matter of hours; it took considerable time and work, and I had the Houston Chamber of Commerce map in my desk, and certainly I could have looked at it at different periods of time.

Q All right. So there were ----

A I did not -- the point I am trying to make is that that map was not the only map I had there of Harris County. I had about three or four maps that had been submitted to the Board.

Q Do you remember the sources of those maps?

A Oh, me; no, sir, I really don't. I believe one of them was Curtis Graves' map.

Q How many times do you estimate you consulted with Mr. Bracewell on Houston Senatorial Districts?

A Oh, I don't know.

Q Would it be twenty?

A I don't think it would be twenty, probably closer to ten; it is just a guess.

Q Between ten and twenty?

A It may have been between ten and twenty; I don't know.

I talked to him, you know, -- I am trying to give you a true impression of how many people I talked to. It was thousands.

Q Did you ever have any of your meetings at a private office leased by the Attorney General or run by the Attorney General; do you know of any private offices the Attorney General has?

A Yes, sir. When you say "private offices," ----

Q Outside of the State Building?

A Well, I think it is a State Building, though, but it is not in this building.

Q What is the location?

A Well, it is several blocks north of here.

Q Do you know the address?

A No, sir.

Q Did you and Mr. Braeswell ever meet there?

A Yes, sir.

Q Was that in the presence of Lt. Governor Barnes?

A I think he was there briefly.

Q Okay. And was at least one of the things you discussed the Houston Senatorial Districts?

A I think that's all we discussed.

Q Okay.

A But, again, I want to point out I had several such private meetings with people who don't necessarily

share Mr. Brasswell's view of how things ought to be done.

Q All right. Now, as I understand your testimony, you found it impractical to consider drawing Harris County lines from a historical point of view; that is, the county had grown so rapidly that the old lines were really meaningless?

A Well, yes, sir, I think that's right.

Q So that was not a factor, the history was not a factor?

A Well, it was not a primary factor, no, sir. I think what is now Senatorial District 6 has probably got more kosher to historic lines than any of the others.

Q How did you find out from, I guess it was Mrs. Brasswell, is that who it was that gave the percentages, the difference in ----

A Yes, sir.

Q Okay. In what form was that information delivered to you; did he simply tell you he had checked it and percentagewise -- the difference in per cent?

A Yes, sir, that's right.

Q Was there a written memo on that?

A No, sir, not to my knowledge.

Q He simply said, "I calculated it," and that is what it was?

A I am not even sure Mr. Keener calculated it. He had several people working, part-time employees, that were working for him, and it may have been one of those people.

Q In fact, Mr. Keener is the one who communicated it to you?

A Yes, sir.

Q Okay. And as I understand your testimony with Mr. Keeen, the map that ultimately became the Texas Senate Map was submitted to the Board piecemeal; in other words, they would deliver that ----

A Well, the urban area was.

Q All right. They got the whole State map first?

A Yes, sir.

Q And then they got [redacted], and then they got Harris, or in whatever order that was?

A Yes, sir.

Q And each of these were approved separately?

A Yes, sir.

Q And you were simply told by Lt. Governor Barnes that this part was okay as far as the Board was concerned, and you would put it in the map; is that the way it worked?

A Well, I think it was probably the Attorney General's staff. The Attorney General's staff was the one who

actually -- I gave them the maps, and they made the contacts within individual members of the Board, and then I was contacted by the staff. With regard to some of them, I personally took them over to Commissioner Armstrong and visited with him about them, and when the approval was gotten, then they went to the Legislative Council.

Q Did you visit with Commissioner Armstrong about Harris County?

A Yes, sir.

Q Did he voice any objections to the map?

A Yes, sir.

Q And what were the nature of his objections?

A Well, quite frankly, I did not -- I really couldn't understand all of his objections, but I think his primary objection was that he didn't feel like the Blacks were given fair representation.

Q All right.

A Even though there was a district that was blacker than Senator Jordan's old district.

Q Okay; and did you reject that argument?

A Well, let me say that I was not a part of the decision-making process.

Q We will talk about that in a second, but did you personally reject that argument?

A Well, I did not feel that it was valid, no, sir.

Q All right. Now, when we talk about Senator Schwartz getting a change; in fact, it was your decision; you agreed with Senator Schwartz and then presented it to Lt. Governor Barnes?

A No, it was not my decision.

Q Well, but I am saying, you ---

A Let me say if it had been left to me, I wouldn't have made the change.

Q All right.

A But I, of course, talked to Senator Schwartz, and I presented it to the Lieutenant-Governor -- as a staff employee, presented it to the Lieutenant-Governor.

Q All right. Did you present Commissioner Armstrong's objections to Lt. Governor Barnes?

A Commissioner Armstrong himself presented his own objections.

Q All right. Did you personally present them to Lt. Governor Barnes?

A I did not feel that -- I mean, why would I present them myself if the Commissioner himself came over and ---

Q Your answer is that you did not, and that's all I am asking you -- did you?

A I was present when the Commissioner himself came over and he and the Lieutenant-Governor personally discussed Harris County. I was there and present at the meeting.

Q And that would have been after you had visited with Commissioner Armstrong and he voiced his objections to you?

A Yes, sir.

Q How much after?

A Oh, maybe an hour.

Q Okay. Now, what was Lt. Governor Barnes' response to Commissioner Armstrong's objections that Blacks were being diluted in their voting strength?

A Well, I don't think he agreed with him.

Q Well, I mean, you were there?

A Yes.

Q What did he ----

A Well, he did not agree with him.

Q All right.

A Of course, I don't remember all of the specifics of the conversation.

Q I appreciate that.

A Obviously, he didn't agree with him, and he felt like their strength had not been diluted, since their district, in effect, was blacker than the one that

was there before.

Q Okay; and that was the reason he felt their strength had not been diluted?

A As I recall, yes, sir.

Q Now, did the desire to enhance any particular person's chances to be elected to the Senate take any part in the way these lines were drawn?

A Oh, I think -- certainly I think it was minimal, I think only with regard to one district, and that was Senator Wallace's, who is an incumbent Senator. We had been informed, and Senator -- of course, Senator Jordan is running for Congress, and Senator Grover is running for Governor, and we had been told at that time that Senator Brooks was going to run for Mayor of Pasadena, which only left one incumbent Senator in Harris County, and certainly I think he deserved some consideration, even though it was minimal. Of course, he retained a good part of his old district.

Q What about the possibility of enhancing the State Representatives' chances of being elected to the Senate; did that take any part in your ultimate mind?

A Not in my mind, no, sir.

Q All right. Specifically I am speaking of Mr. Cox or

Mr. Lennon, was there any desire on the part of anyone that you knew of that had anything to do with this map to enhance their chances of being elected?

A No, sir, not anybody that had anything to do with this map. Let me say I talked to Jack Ogg on numerous occasions about Senatorial Redistricting in Harris County, but I talked to several State Representatives from Harris County who were desirous of running for the Texas Senate; Sonny Jones, and you can run a gamut of them.

Q All right. Did Mr. Ogg's or Mr. Lennon's name come up in discussions with Mr. Bracewell?

A Yes, sir, I am sure they did.

Q All right. And was one of the things that Mr. Bracewell was interested in the enhancement of either of these two gentlemen being elected to the Senate?

A I am sure it was; I am sure ----

Q Did he voice that to you?

A I am sure he did, yes, sir.

Q Do you recall it?

A I wouldn't say -- you know, it was not really Sonny Bracewell's map; it was the Houston Chamber of Commerce's map; at least, that's the way I looked at it. I don't know who drew the map they submitted.

Q Have you had the occasion to subsequently learn that any of the White - non-White statistics you relied on were mistaken?

A No, sir.

Q And it was, as I understand it, a desire on the part of the Board not to dilute the Black percentage from the side that it was in Barbara Jordan's district?

A Yes, sir.

Q All right. And that would have been because of, at least one thing, your understanding as a lawyer of what the law required?

A Pardon me; I didn't get that, now.

Q Well, one of the reasons, as I understand it, that there was a desire not to dilute the Blacks' percentage in a particular district would have been that the law, as you understood it, would require that the dilution not occur?

A Well, I am not sure that that's necessarily the law. I think it's certainly subject to interpretation.

Q Then, was the desire simply a moral decision on the part of the Board members?

MR. McDANIEL: That calls for a speculative answer.

MR. MILLER: I don't think so.

MR. MCDANIEL: Well, you have indicated that the Board was very concerned about Harris County, and they did not want to dilute the Black voting strength in a particular Senatorial District. I don't even know how you define the word "dilute." I think the question calls for a speculative answer.

MR. HILKEN: Well, we are using the term he has used. If he doesn't understand the question, I will try to clarify it.

Q When we first began, in fact, before I began, you indicated to Mr. Rosen that the Board was very concerned about not diluting the Black percentages in -- the voting strength in Harris County; right?

A I think that is a fair statement, yes, sir.

Q Okay. And I am asking you if anything ----

A As I recall, the map that the Houston Chamber of Commerce submitted pretty well split the Black vote up five ways. I think the Board was concerned that there would be no discrimination in drawing the map.

Q All right.

A I knew generally where the Black areas were in Harris County when I drew the map, but let me say this -- as you well know, being familiar with Harris County -- they are significantly spread out.

Q Do you know from any of your conversations with any

of the Board members the reason that they desired not to split -- to dilute the Black voting strength?

MR. McDANIEL: I am going to object to the question. "Dilute" is not a subjective, or-----

Q Have you ----

MR. McDANIEL: ---- is a subjective term.

Q As you have used the term?

THE REPORTER: I cannot get both of you talking at once.

MR. McDANIEL: Well, either the way you have used it or the way he has used it is calling on him to express an opinion. "Dilution" is a word you apply to a result once you have decided whether it exists or does not exist; it is pliable.

Q All right. Let's say reduce the Black percentage; was there a desire on the part of the Board not to reduce the Black percentage in a Senatorial District from that which it was in Barbara Jordan's district; is that a correct statement?

A I am not sure it is.

Q Well, I thought that was what you had said; maybe I am misled.

A I am not sure that -- I mean, the Board, no member of the Board specifically instructed me the way you just phrased your question, that we have got to have

a district that is or is not Black or blacker -- you know, quite frankly, I didn't know what the percentage, the Black percentage, in Senatorial District 11 was until after I finished the Harris County map and run a total on it.

Q But race was a consideration?

A Yes, sir, it was.

Q And it was a primary consideration in the map of Harris County?

A I wouldn't say it was a primary consideration. I would certainly say it was an important consideration.

Q All right. Now, is there any particular reason that what would be the most core, you know, the most -- the concentrated part of the City, is divided among three Senatorial Districts? I mean, is it -- let me just leave that question as it is and get an answer to that.

MR. DANIEL: Repeat it; I don't know what it was.

Q All right. Is there any reason why the concentrated part of the City is divided among three Senatorial Districts?

A The concentrated part of the City consists of about 900,000 people; where is the concentrated part of the

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City -- are you speaking from a geographical standpoint or a population standpoint?

Q Well, let's say population standpoint.

A Where is the centermost part of the City, then -- the centermost part of the City has got 900,000 people in it.

Q All right. Then, would you say your answer for dividing the centermost part of the City ----

A Well, I am not ready to agree that I even divided the centermost part of the City.

Q All right. Let's talk about -- are you familiar with the Black areas that exist in -- let me see how I can do this -- (Running up map) -- the area within the circle that I have drawn on this particular map of Harris County, which we will attach to the deposition?

A How many people are in that area that you ----

Q I have no idea; I mean, would you characterize this as a substantially Black area, majority Black area?

A Again I want to say I am only generally knowledgeable about Harris County, and certainly less knowledgeable today than I was when I drew the map. Now, the area you have drawn, first of all, I think it is very important to know how many people that you have drawn that circle around, and your question is, again, what,

now -- how many Blocks I think live in that area?

Q So; would you characterize this as a non-White area, a majority non-White area?

A I have no idea.

Q Okay.

A But there certainly are some Block centers of population within that circle.

Q But you did not, although the information was available to you, take the time to plot Block areas by census tracts before drawing?

A Yes, sir, I sure did.

Q In other words, you are saying there was a map you studied by census tracts?

A You bet; and it was in my office when I drew that map.

Q All right. And that map that showed -- how did you do it; was it done by over fifty per cent and under fifty per cent non-White?

A It was done seventy-five per cent to a hundred per cent, fifty per cent to seventy-five per cent, seventy-five per cent to fifty per cent, and below twenty-five per cent.

Q All right. Below twenty-five per cent, twenty-five to fifty ----

A Yes, sir.

Q ---- and fifty to seventy-five?

A Yes, sir.
Q And over seventy-five?
A Yes, sir.
Q All right. So you charted these figures ----
A I personally did not chart them.
Q All right.
A The staff of the Senatorial Redistricting Committee did.
Q All right. You did that by hatching, cross-hatching, shading, ----
A Well, they used colors.
Q Colors; all right. And you had that particular map in front of you when you drew the Harris County Senatorial Districts?
A Yes, sir, it was in my office.
Q All right. Mr. Spellings, did you also have available to you any election returns by either census tracts or precincts for Harris County when you drew your map?
A Well, I think that Mr. Hoover and his staff had some information like that. I didn't use it in preparing that map.
Q All right.
A And it was not in my office.
Q All right. So you didn't rely on any election

returns; is that right?

A No, sir.

Q Okay. When you submitted your Harris County plan first to Lt. Governor Barnes -- is that correct -- and then to the other members of the Board, or did you do it all at one time, or what?

A I am relatively certain the Lieutenant-Governor saw it first.

Q All right; did he state at that time that he approved it?

A Well, I assume that he did.

Q If he had not approved it, would it have come back to you?

A I am sure it would have -- not necessarily, though.

Q Before it went to any other Board members or not?

A I do not sure it didn't go to the other Board members first.

Q Okay.

A I think that maybe what happened and probably what happened was that I gave copies of it to the Attorney General's staff before Barnes even saw it.

Q Was it revised in any fashion from the way you first drafted it?

A Not to my recollection, it was not.

Q Well, at least in one regard it was, because Senator

Schwartz had a couple of census tracts changed?

A Oh, that's right.

Q But there were no other revisions that you know of?

A That's right.

Q The other thing that you had talked about when you were dealing with the entire State was that you started at one end of the State and started drawing Senatorial Districts, you know, working your population, and then you moved across the State. With respect to Harris County, as I understand it, you started with the core and used the core concept?

A Yes, sir.

Q All right. Now, will you tell us what you mean by the core concept as a method of drawing district lines?

A It seems that you start with the most populous part of the urban area and work outward from that point.

Q All right. Do you recall with sufficient clarity to be able to work with an "X" what you remember to be the most populous area in Harris County on this particular map here?

A Well, I don't really think I could do that.

Q All right. After you finally found the most populous area, that would have been by an examination of census tracts?

A Yes, sir.
Q In which direction did you move?
A I really don't recall.
Q Well, did you first take care of the contiguous districts, that is, 17 and 7; in other words, districts that included other counties?
A As I recall, I think probably the first thing I did was take the census tracts that went into Senatorial District 17.
Q All right. And what about 7?
A No, I started up in the middle then.
Q All right. You started in the middle, and you simply started drawing what I would characterize as a broken line?
A Well, it is obviously broken, because of the shape of the census tracts, as I pointed out before.
Q Okay. But you ----
A You have to follow -- or we didn't have to, but we didn't have any smaller units broken down, so it was absolutely necessary that I follow census tract lines.
Q All right. But you don't recall whether you started out going to the west, to the north, to the east, or in what fashion you moved out from the center of the City?

A I really don't recall; I really don't recall.
Q All right. Do you know of any ----
A Let me point out that this was the last thing that was done on the map.
Q This was the last county drawing?
A That was the last county drawing.
Q All right. Do you know of any connection between the drawing of the Harris County Senatorial Districts and the drawing of the Harris County Congressional Districts?
A I am not at all familiar with the Congressional Districts; I had nothing at all to do with the Congressional map.
Q Okay.
A I don't believe I have ever even seen the Congressional map.
Q Do you know of any connection between the two?
A There was absolutely -- as far as I know, there was none. The Congressional map was drawn by a Conference Committee while the Legislature was still in session.
Q All right. Did you have the same instructions from Lt. Governor Barnes with respect to Harris County that you had had with respect to the rest of the State; that is, to be fair and to, as closely as possible, follow the one-man - one-vote rule?

A Yes, sir.

Q Did you have any other specific instructions with respect to Harris County?

A Well, I can't recall any other specific instructions.

Q All right. And in particular, I am speaking of the question of race?

A Well, you know, I would just be repeating myself.

Q All right; but that was a specific instruction from Lt. Governor Barnes?

A What was a specific instruction?

Q Whatever you would be repeating yourself on?

A All right; I will repeat myself. I think the Lieutenant-Governor and the Board -- of course, I can't recall what their exact language was or their exact instructions, I think they were particularly interested in drawing a map that was no discriminatory against the Blacks.

MR. HELKIN: That's it; thank you.

CROSS EXAMINATION - (Cont'd)

Questions by Mr. Stocks:

Q Mr. Spellings, I am Cleo Stocks, representing Intervenors in the Tyler case, concerned with re-apportionment of the House, especially as pertains to Blacks in Dallas County. Now, I think around the

beginning of your testimony you indicated that you began working on the plan at the instruction of and direction of Mr. Bonner?

A You are speaking now of the House plan?

Q Of the House.

A Yes.

Q Okay. And you had one other person, I think you indicated, working with you on that particular project; is that right?

A Well, primarily, I had one other person, Mr. Bonner; but, again, I relied on considerable help from the Attorney General's staff and from the Legislative Council.

Q Okay. Therefore, then, the Attorney General did know, in fact, that you had been assigned to work on this particular project?

MR. McDANIEL: If I might clear that up -- everybody is in some doubt about this -- let me state for the record -- nobody has really asked the question to bring this out -- when Bob drew this map, there was somebody from our office there a lot of the time. I spent a lot of hours standing there in his office watching him, and we would talk about things as he drew them. He was doing the drawing and basically making the decision as to where the

line was going, but we were sitting there looking at him and agreeing as he went along.

Q Okay. With that in mind, let me be more specific: Did Mr. Crawford Martin know you had been assigned to this particular project that you were working on, a reapportionment plan for the House?

A I am sure he did, yes, sir.

Q When you finished that particular plan, did he know that you were the one who had drawn it?

A Well, I think, as Mr. McDaniel said, there were Attorney General staff people there almost all the time, but I feel like that he knew the majority of the work was my work, yes, sir.

Q All right. Did Mr. Bob Johnson know you had been assigned to work on the reapportionment plan?

A Yes, sir.

Q Did he know when the plan was approved that you were the one that had drawn it?

A Mr. Johnson helped me with some areas.

Q Your answer is "Yes"?

A Well, yes, sir, he knew that I did the majority of the work, yes, sir.

Q Did Mr. Calvert know you had been assigned to work on this map?

A I do not know.

Q Do you think that Mr. Calvert knew you were the one that had drawn it when it was approved?

A I do not know; I had my discussion with Mr. Calvert.

Q Did a Mr. Finley, who is an eighteen-year-old who worked with the Legislative Council, know you had been assigned to work on this project?

A I do not know. I am sorry; I don't even know Mr. Finley.

Q All right. You have already indicated that Mr. Bernier knew you were assigned to work on the plan?

A Yes, sir.

Q And he, of course, would have, then, since it was drawn and approved that you were the one that drew it; is that your answer?

A Well, he would have known that I did the majority of the work. He did not participate in all of the decision-making, for example, some of the areas that were done down in the Council -- I will go back to my example of Taylor County -- he was not present at this time, and I don't think he was present in the Council when the thing was put to bed.

Q He did know you were assigned to the project?

A Yes, sir, he knew I was working on it. He helped me to a great extent.

Q Would you say, more than likely, then, he would have

you were the one that had drawn it when it was approved?

A Well, I think more than likely he would know that I did the majority of the work, yes, sir.

Q And, of course, Mr. Barnes assigned you to that, so Attorney General Martin, Mr. Johnson, Mr. Hooser, Mr. Armstrong and Mr. Barnes knew that you had been assigned to work on a plan of reapportionment for the State of Texas, and they knew when that plan was prepared, and when it was approved, that you were the one that drew it?

A Well, I am not sure that all those people knew that I was assigned the task of drawing the map, and I am not sure ----

Q Well, we just went over that individually there, and you indicated -- you said you didn't know about Mr. Calvert and Mr. Fisher. Now, the others you said knew you were assigned to that project?

A I didn't know that I had said that. I thought said did they know that I drew the map ----

Q Well, can we ----

A ---- after it was all over.

Q Did Mr. Martin, Mr. Johnson, Mr. Hooser, Mr. Armstrong and Mr. Barnes know that you drew the map after it was over?

A I think that these people -- did you mean Mr. Calvert?

Q No, I didn't.

A Okay.

Q Did he, also?

A No; if you did not mean Mr. Calvert, I can answer your question by saying that I think all of those people knew that I did the majority of the work after it was over.

Q All right. If Mr. Reynes had instructed you to draw a single-member plan for Dallas County, would you have done that?

A Certainly. Let me say this: Mr. Reynes, speaking for the Board.

Q Uh-huh. One other thing: Are you familiar with the population of Dallas County?

A You are talking about just in terms of numbers?

Q Yes.

A Yes, sir.

Q What would you say the population of Dallas County is?

A I think it is 1,342,000.

THE REPORTER: Would you give me that figure again?

A 1,342,218, I think.

Q How many of that population would you say is Black?

A Oh, I have seen the figure and, you know, I was aware of the figure at the time. I can't recall right now; it would just be a guess on my part.

Q What would you guess?

A I would guess maybe twenty-five per cent, twenty per cent.

Q All right. And in numbers of hundreds of thousands of people, what would you guess -- would you say 250,000 people?

A Well, what is a fourth of a million-three?

MR. McDANIEL: Clee is trying to help you a little bit.

A Maybe 250,000. I would just be guessing.

Q Okay. Assuming if Dallas were apportioned on a single-member basis, how many districts do you think would be Black, assuming the Blacks would be grouped together in single-member districts?

A There are eighteen -- the population in Dallas County entitles them to eighteen House members. I think it would depend on, of course, where the Blacks are -- live -- and whether or not they are spread out throughout the county. It would just be a guess on my part. If you assume that a fourth of the county is Black, then, I guess you can assume

if it were under single-member districts, they would get a fourth of the representation, ----

Q Okay. And ----

A ---- which would be a fourth of eighteen.

Q In preparing your plan, did you have any contact with any Black elected official of Dallas or any other interested Black citizens as to whether or not they preferred multi-member districts or multi-member plan over and above a single-member plan?

A I did not. As I recall, I did not personally talk to any Blacks, but the Intervenor-Governor did receive a telegram that was signed by the Reverend Sam Holmes and Dr. Hunter Connell, and maybe one or two other people, and I was aware of that telegram. And in that telegram they expressed a desire that Dallas County have single-member districts.

Q Did you see the plan that was prepared by Conor Mooney and his staff?

A Just briefly.

Q Did you give it any consideration?

A You are talking about the single-member district plan?

Q Yes, sir.

A I was under instruction by the Board to handle Dallas County on an at large basis, so it wasn't a matter

of my giving any consideration to that plan. I was just working at the instruction of the Board, and the Board had already made a decision, as far as I was concerned.

MR. STEELE: All right; that's all.

Robert Spillane

SUBSCRIBED AND SWORN TO BEFORE ME on this the ____day of _____, 1972.

Notary Public in and for Travis County, Texas

REPORTER'S CERTIFICATE

THE STATE OF TEXAS }
COUNTY OF TRAVIS }

I, Marie L. Sing, a Notary Public duly commissioned and qualified in and for the County of Travis and State of Texas, do hereby certify that pursuant to notice there came before me on the 20th day of December, 1971, at the Supreme Court Building of the State of Texas, in the City of Austin, Travis County, Texas, the following named person, to-wit, DORSEY HYSLOPE, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath, and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness; and that said deposition was to be thereafter submitted to the said witness to be by him carefully read over and subscribed and sworn to before any Notary Public and thereafter returned into court.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and, further, that I am not a relative or

REPORTER'S CERTIFICATE - (Cont'd)

employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this _____ day of January, 1972.

Notary Public in and for
Travis County, T e x a s

Mutcher

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CURTIS GRAVES, ET AL.	
VS.	NO. A-71-CA-142
BEN BARNES, ET AL.	
DIANA MECHSTER, ET AL.	
VS.	NO. A-71-CA-143
SAM BULLOCK, ET AL.	
JOHNNY HARRIOTT, ET AL.	
VS.	NO. A-71-CA-144
PRESTON SMITH, ET AL.	
VAN HENRY ARCHER, JR.	
VS.	NO. A-71-CA-145
PRESTON SMITH, ET AL.	

APPEARANCES

Mr. David R. Richards, of Austin, Texas,

Appearing on behalf of Plaintiffs Diana Mechster, et al.

Mr. Robert H. Greenberg, of Dallas, Texas,

Appearing on behalf of Plaintiffs Johnny Harriott, et al.

Mr. Rodney Mathies and
Mr. Arthur W. Allen, of San Antonio, Texas

Appearing on behalf of Plaintiffs Van Henry Archer, Jr., et al.

APPEARANCES (Cont'd)

Mr. Stuart Nelkin)
) Of Houston, Texas,
Mr. David Berg)

Appearing on behalf of Plaintiffs Curtis Graves, et al.

Mr. Walter Irvin)
) Of Houston, Texas,
Mr. Cleo Steele)

Appearing on behalf of Plaintiff Intervenors Washington, et al., in the Tyler case.

Mr. Ed Idar, Jr., of San Antonio, Texas,

Appearing on behalf of Intervenors in the Tyler case.

Mr. S. Price Cunningham, of Dallas, Texas,

Appearing on behalf of Intervenors Conrad, et al.

Mr. Earl Luna, of Dallas, Texas,

Appearing on behalf of Defendant Roy Orr.

Mr. Sam McDaniel, Assistant Attorney General of Texas;

Mr. Al Curry, of the firm of Fulbright, Crooker & Jaworski, of Houston, Texas,

Appearing on behalf of Defendants.

- - - - - -

DEPOSITION OF ANN HUTCHEN, a witness of lawful age, taken on behalf of the Plaintiffs, Dimma Regnotay, et al., in the above entitled causes pending in the District Court of the United States for the Western District of Texas, Austin Division, pursuant to the notice heretofore issued and the agreement hereinafter set out, before Opal Locke, a Notary Public in and for Travis County, Texas, at the Supreme Court Building, in the City of Austin, Travis County, Texas, on the 29th day of December, 1971.

(The deposition was taken in accordance with stipulations as to deposition of Crawford C. Martin, as follows:

MR. RICHARDS: Do you want to consider, Sam, that this is taken by -- I guess it is taken pursuant to notice, inasmuch as General Martin is a defendant, do you -- he is a defendant in some of the cases?

GENERAL MARTIN: I am a defendant in some, and not in some of the others.

MR. RICHARDS: I didn't know whether Sam wanted to treat it just by notice, or how you wanted it.

MR. McDANIEL: I have no objection to treating it as if it were taken by notice, and my only thing is, I do want -- I am not going to waive

signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And so we -- do I understand that we are all in agreement that we will waive the provisions of the Federal Rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the Federal Rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving General Martin's unavailability?

MR. McDANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present General Martin's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. McDANIEL: That is correct. That is correct.

MR. LUNA: For the State Chairman, we do not waive our right to cross-examine him at the trial,

and in the event he should not be available at trial, we do not then waive the use of this -- if he is available, but is not placed on the witness stand, we don't waive our right to cross-examine him at the trial.

MR. RICHARDS: Well, let me be sure I understand. Suppose that General Martin is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of trial?

MR. LEWIS: I reserve the right to examine him in person.

MR. RICHARDS: Well, then, at least you are on notice from me that it is going to be my position that if you have questions to ask General Martin, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are here pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as first-hand testimony.

MR. LEWIS: I understand.

MR. RICHARDS: All right. There.

MR. LEWIS: I may ask him some questions

today, but I am simply not waiving any of my rights by participating in this deposition that I don't automatically waive thereby.

MR. RICHARDS: Is there anybody else who has got a position, attorneys who are present who want to put any position of record in the case?

GUS HUTSCHER,

a witness named in the notice heretofore issued, being first duly sworn in the above causes, testified on his oath as follows:

DIRECT EXAMINATION

Questions by Mr. Richards:

Q Speaker Hutscher, my name is David Richards. I represent a portion of the plaintiffs in this case on challenge to the reapportionment.

A Yes, sir.

Q My questions probably will be fairly brief and relate, I think, essentially to the matter of the House plan. You have already indicated you had your deposition taken before, you know the purpose of it, and realize that this will be perhaps even used in court as a portion of the record in the combined reapportionment cases?

A That is correct.

Q Mr. Agee, have you had the opportunity of each of the other members of the Legislative Redistricting Board over the last few days, and I think I will try to go directly to some of the matters. Did you participate in each of the public hearings of the board on the matter of legislative reapportionment?

A Yes, sir, I think I attended each and every one of them.

Q Were there any private or off the record or non-public meetings of the board, the board as such?

A We had one or two that probably would be called work sessions, but otherwise, the hearings that I attended were either public or the most public was brief statements by the presiding officer, who was the Attorney General.

Q Did you have members either of your staff or members of the staff of the House prepare any redistricting plans for consideration by the board?

A Yes, sir, we tried to be a very active member of the board, and we prepared, I would say, approximately seven complete plans and modifications of another four or five which eleven different proposals prepared.

Q Prepared by you or people at your direction, is that correct?

A Yes, sir, people that was working at our direction.

Q Were each of the plans prepared by you as regards the issue of Dallas County, Bexar County and Tarrant County, did each of them provide for at large representation for those three counties, as you recall?

A That is correct. At large for Bexar, Tarrant, and Dallas.

Q Was that your position throughout the deliberations of the board, that those counties should be continued to run at large rather than either individual districts or---

A This was my position because I think this was the majority position of the present elected officials from those designated counties.

Q It was your position, first, is that correct?

A That is correct. I did voice one modification with respect to Dallas County more or less just as -- to initiate a thought.

Q And that was what?

A That it could possibly follow a pattern that was implemented in Harris County some years ago, and that is to give Dallas County the representation they were entitled to but have something larger than individual districts but less than running at county-wide.

Q Yes, I think at one time, I think there was a

newspaper story that you raised the possibility of either six districts of three or three districts of six, is that right?

A That's correct.

Q Did you voice that in a meeting of the board or was it privately to members of the board, do you recall?

A My visit was with some members of the Dallas County delegation.

Q I see. Did you find some receptivity to that proposal among the members of the Dallas delegation?

A Well, it was kind of carrying forward some notes and initial ideas that was advanced by members of this delegation even as early as the first part of the regular session.

Q So the Dallas delegation, at least, was receptive---

A Yes, sir.

Q ---as far as---

A I was trying to work with all groups of the Dallas delegation, including one or two of the senators.

Q So at least the Dallas delegation was receptive to the notion of perhaps something in between at large and individual member districts, is that right?

A That's correct.

Q Did you ever thereafter, having discussed it with

the Dallas delegation, present this by way of a proposal to the Legislative Redistricting Board, either individual members of it or the board itself?

A Well, we drew these various plans, but since the overall plan would not fit into their plan, we didn't ever get that far, and as you probably noticed from the record, my vote wasn't on the prevailing side.

Q Yes.

A In this reapportioning plan.

Q I am aware of that.

A So in other words, our plans were tabled.

Q But at least plans that you or your staff, rather, prepared did envision at least alternatively that carving of Dallas into something less than county-wide, is that correct?

A Yes, sir, my efforts on the board, one, was to be active, and second, to eliminate what had apparently been spelled out as unconstitutional features of the bill drawn in regular session.

Q I guess the minutes of the board -- you actually made, I think, some presentations on -- of alternate plans during the regular sessions of the board or did you--

A Well--

Q --seek only to delay the Board's findings?

A ---on the Senate board my notion was to postpone further consideration until the next morning, with the idea that we had drawn a substitute which was not one of the original plans that we had offered, but we drew one trying to interpret the guidelines acknowledged by the majority members of the board, and guideline, gentlemen, is a very key feature in drafting reapportionment. Each one of us here could draft, in my mind, our own separate proposals, but if we didn't start with the same guidelines, we would even be further apart than if we used the same guidelines.

Q That plan that you wished to present to the board or wished them to delay their consideration so that they could consider, is a copy of that available, do you know, among either your papers or the papers of the board?

A I would have to check with my reapportionment chairman, because I think I turned most of this material over to him, and his office has it.

MR. RICHARDS: Mr. Curry, would you mind making a note to check here, and if a copy of that plan is available, could we just attach it to the deposition?

MR. CURRY: Sure.

A The guideline, if it's helpful, that we used, was to give an individual county the representation that they were, one, entitled to, and second, uses the surplus for a designated county. I think we may have been a little more liberal in our utilization of the surplus than the present board plan.

Q Let me ask you this. Did -- what matters concerns me about the Supreme Court decision of the Texas Constitution is how one treats the surplus when -- after you allocate to a county these representative seats to which it is entitled. Did you allocate the surplus into a single district or did your plan at some points divide counties three directions?

A I think in some cases it became necessary to divide the surplus in more than one direction. I think Brazoria County may have been an example. I am stating this without reference to a map, I hope you understand. But see, if your neighboring counties are all pretty close to having individual representation, and you have one like Brazoria County that has a surplus of, I believe approximately thirty thousand, if you send all that in one direction it would probably make that district too large; so I believe there were several cases throughout the state that you might almost say it was imperative

to utilize a surplus in more than one direction. But I do think there should be a reason to support this utilization in more than one direction. Otherwise, we tried to put it in one direction.

Q Historically, you were chairman, I believe, of the committee that reapportioned the House in 1965, is that correct---

A Yes, sir.

Q ---is that accurate?

A I had the pleasure of the interesting responsibility to implement the initial Baker v. Carr for the State of Texas. That was to my mind the federal landmark case.

Q And what precisely was your role at that time with respect to the reapportionment plan that was drawn in 1965?

A Well, I was the chairman of the Congressional Legislative Redistricting Committee under Speaker Barnes at that time.

Q That was the House committee, is that correct?

A That's correct.

Q Was that plan ultimately drawn by a conference committee of House and Senate conferees?

A No. The pattern was basically this. The House had to accept basically complete responsibility for the

direction of the House reapportionment plan. The Senate was accepting basically complete responsibility for the Senate reapportionment plan. The Congressional plan was a conference committee report.

Q Were you on that conference committee?

A Yes, sir. For those who worked within the process, I think understand the distinction that must be made in the pattern of both bills.

Q Yes. Well, I think what you are really saying is that there has been a tradition honored, as I understand it, that with respect to reapportionment, the House in effect reapportions itself?

A Yes, sir.

Q The understanding to be that the Senate will not intrude itself into that matter, is that correct?

A This is not treating it lightly in the halls of legislation, because here is an issue that every House member is vitally concerned with.

Q But the notion was and---

A That's right.

Q ---still is, I take it, that each house in effect decrees its own apportionment, and the assumption is, unless there is something flagrant about it, the other house will go along?

A I think this is correct, and the point that I

underline as being important, I think a House member should be -- I presume that an elected official has not only received a majority of votes, but that he is going to do everything he can to represent the majority of the people in his district and that when he speaks for his district, we are keeping the reapportionment close to the people.

I had to give you that little extra because sometimes by the news media stories, you never get that impression that I was that concerned about redistricting, the final aspect -- the finest aspects.

Q You did not join in either the Senate or the House bills -- the action of the redistricting board?

A I cast a negative vote on both the Senate reapportionment bill and the House reapportionment bill as presented by the board.

MR. RICHARDS: I think that is all I have.

Questions by Mr. Mary:

Q David Mary. I represent Curtis Graves in Harris County. Do I understand you to say that you voted against the Harris County reapportionment map that was drawn by the board

A No, we didn't get any direct votes on any of the amendments. I did vote against the proposal that was adopted by the board.

Q I am going to give you an example of that map. Batham, can I bother you again for that?

Is this the map you have reference to, Mr. Hatcher?

A This is on Senate redistricting, now.

Q Yes, right. We are just concerned in my area on the senatorial redistricting.

A I voted against the final passage of the Senate redistricting proposal that had this as a feature of the bill -- of the plan, rather.

Q And we are referring now to the -- what is presently the Harris County senatorial districts. Mr. Hatcher, you spoke about guidelines a moment ago.

A Yes, sir.

Q What guidelines did you follow, what makes a good senatorial---

A Number one, I think all of us ever since Baker v. Carr has become the law of the land, that population is the number one factor in my mind.

Q So without regard to any other factor, evenness in numbers of people represented?

A I think that that was probably the number one feature.

Q And then what other factors?

A I think from there around community of interest, compactness, and of course, the districts have to be contiguous. But the one other big point that gets into personality argument so much in redistricting is the fact that most all who work in drafting are doubtful what is the appropriate guidelines.

I have experienced in my reapportionment one time where I went with the federal case law too strong, and we were struck down in the state courts by saying we overlooked the state's constitution, and this is why I said a while ago that my interpretation is probably a little bit more liberal than the board's is because we were instructed, working with house counsel, in trying to interpret federal case law, but you also have a responsibility to the state constitution. And for you and I to ascertain what is the guideline to use leaves us kind of somewhat on nebulous terms---

Q Is there---

A ---and so really the difference of opinion in redistricting -- what I am trying to say, most of them are completely honorable. It is just what is the guideline to be used. But I listed the criteria that I basically took into consideration.

Q Is there anything else of paramount interest that you used as a guideline, or are these the primary goals?

A No, I think another one I list is interests of the people, and the next one is interests of spokesmen for the people being the elected representatives.

Q Does that mean you went through the -- or you would be more inclined to listen to the presently elected representatives of the people to see what the people of that district might favor?

A I mean back on this point here when we say that I have a concern for the people, you will find in the minutes of the House Redistricting Committee this time that starting back in the early part of the regular session, I challenged my redistricting committee to go to all sections of Texas to give the people an opportunity to express their viewpoints in advance, and they did this, and I think this is so vitaly I think it is very important.

Q You were opposed, I take it, to Harris County senatorial districts presently drawn, or at least, you voted against it?

A I voted against the overall senatorial redistricting plan. I--

Q What are your objections to that plan, sir? I didn't

A No, I was going to say that my work on Senate redistricting was more of less to furnish information to the Legislative Council and to the Lieutenant Governor's office.

Q And did you by that mean, sir, the reason here is that as we acknowledged in testimony of the previous questions, that Senate redistricting is generally put in a package by the Senate and the presiding officer, and as a general matter, the Senate reapportionment is put together by the Senate and its members. So I really did not work on the exact mechanics. I can't tell you the mechanics only within a reasonable degree, of the districts here. I didn't study the precincts, didn't count the lines and things of that nature.

Q Did you voice your opposition to this plan, your basic reasons why you were opposed to this plan, to anybody on the board, Mr. Hutcheson, or to anyone at all? I am trying -- I want to know why you voted against it; what guidelines did it fail to meet?

A Well, I had some -- I think I had more objections which I made known to members in the caucus-Fort Worth area. My one big complaint about it was the

fact that objections raised in McLennan-Abilene area——

Q To the Harris County?

A No, I am talking about the overall Senate plan. I did not take a vote on this proposal, nor did I voice any objection per se, and on the other hand, nor did I have anything to do with the actual drawing of these lines.

MR. CURRY: Now you are referring to the senatorial districts in Harris County?

A In Harris County per se.

Q So it's safe to say that as long as it was okay with the Senate, it was okay with you that this plan be passed, the Harris County plan?

A Well, and to go one step further, when I saw this proposal it had three signatures of the members of the board, so it was really not an assignment for me to work on other than to say, well, I wanted to vote for it or against it, and I voted against it.

Q Do you have any objection to the way the Harris County senatorial districts have been drawn?

A I haven't evaluated it on the plusses or the minuses.

Q If you were told that the Harris County plan as presently drawn incorporates at once in one district, specifically the 15th, the wealthiest area, perhaps

one of the wealthiest areas in the United States, River Oaks, which I take it you have heard of?

A Yes, sir.

Q And where most Fulbright lawyers live. And a ghetto area incorporated in this oddly shaped section, would you -- if that fact were true, sir, would you consider that this particular district violated your standard that each district have community of interest?

A I would have to stay with the fact that community of interest should be a factor to consider. Now, what percentage, what is the makeup of these districts, I wouldn't testify; I don't know.

Q You are not familiar enough with Harris County to pull up anything about these districts?

A I think I remember from our initial pattern where we had Harris County divided into three districts, I could tell kind of from the makeup of your Congressmen, from the makeup of your House seats, something of the philosophy, but as far as individual makeup, I--

Q All right. Well, I can cut this short by asking you, did you consider any of your own guidelines and -- did you take your own guidelines and superimpose those on the Harris County?

A No, sir.

Q And you didn't draw any maps for Harris County?

A I drew no maps for Harris County; I drew no maps for Senate redistricting.

Q But most of your objection was -- to the Senate plan was to some other area -- I think you said Abilene or---

A Abilene and the Waco area---

Q Waco area.

A ---basically, and I might say this, the objections of my local senator, which is very practical from the fact that I still represent a district and people in the State of Texas.

MR. BERG: Okay, Mr. Hutcheson, I appreciate it. I can't get anywhere with you. Thank you.

Questions by Mr. Mason:

Q We met a few minutes ago. To refresh your memory, I am Nathan Mason from San Antonio, and I represent Van Archer and others, and we are contesting both the House and the Senate redistricting plans.

A Yes, sir.

Q Mr. Archer is the Republican County Chairman from there.

A Yes, sir.

Q Now, Mr. Hutcheon, I will try to be brief. Now, when you were first shown the finalized plans, did I understand you to say a moment ago that they already had three signatures on them?

A Yes, sir.

Q And how long would this have been prior to their approval? By that I mean October 15 in the case of the Senate and October 22 in case of the House, I believe, both this year.

A Oh, I would imagine six to eight hours.

Q That would be your first view of the finalized plans prior to---

A Yes, sir.

Q ---each plan's individual adoption?

A I would say there was a difference -- I would say the six to eight hours I have reference here to the Senate proposal. The House plan, naturally we probably spent more time on the -- much more time on the drafting part.

As far as the Senate proposal is concerned, we were funneling information, thoughts, views from telephone conversation, correspondence, ideas, to the Legislative Council and to the Lieutenant Governor's office, since they were in our mind the right place to be supervising the drafting of Senate

reapportionment. And this is not to take away or minimize the role we play or the responsibility of any member of the board. It's just on every problem somebody has to have the grouping of the notes and apply them to the drafting board, drawing board.

Q Who, to your knowledge, did do the drafting of the two plans, if you know?

A I think the Senate proposal was put together by the Lieutenant Governor's office, with the assistance of the Legislative Council, and the legal assistance of the Attorney General's office.

Q And the House?

A I think this was put together basically by the same pattern, although it was probably many more proposals drawn with respect to House reapportionment than with respect to Senate reapportionment.

Q And when you say Mr. Barnes' office, you are speaking of the Lieutenant Governor himself and Mr. Spellings and Mr. Hoosar, or do you know those gentlemen?

A Yes, sir, I know the gentlemen.

Q Are you speaking of those two in conjunction with Lieutenant Governor Barnes?

A Yes, sir.

Q And I further take it that your testimony is that

you did not draw up or cause to be drawn up any of the lines involved in either of the two proposals as passed?

A I would prefer we would divide them a little bit. I don't---

Q All right, sir.

A I did not even attempt, as I said earlier, to draw a Senate reapportionment plan. I advanced the ideas that came to my office, I offered assistance and tried to be an active member, but I acknowledged primary responsibility for the Senate redistricting plan was with the senators and the presiding officer of the Senate. The House was a little bit different.

Q Was your advice sought by the ones that did draw the lines as concerning your ideas of the drafting of the lines and the creation of the districts?

A I would say a certain part of the ideas that I recommended for Senate reapportionment was implemented. I would say that a certain amount of it naturally wasn't, because I voted against the proposal. I was not completely satisfied with the Senate redistricting bill or else I would have voted for it.

Q Did they from time to time -- by that I mean Senator Barnes and his staff or General Martin and his staff --

come to you asking questions concerning your ideas as regards to certain districts?

A I think I saw one or two rough plans before we ever got down to the final version.

Q Well, did they ask you for your ideas or criticism or suggestions regarding these---

A The avenues at that time were open, yes, sir.

Q Sir?

A Yes, sir, the avenues were open at that time for suggestions.

Q Did you make suggestions and recommendations?

A I made several, yes, sir.

Q Were they incorporated in the final plans?

A Some of them were, and then again, some of them weren't.

Q Speaker Mutscher, if you recall -- now, you had the Senate plans presented to you, as I recall by your testimony, six to eight hours prior to its final passage?

A That was the final version, yes, sir.

Q How long did it take you, as near as you can recall, to negate the plans or to cast your vote against them?

A I think after a couple hours I pretty well reached an idea that I would vote against the proposal

unless it was changed.

Q Now, this may have been covered to some degree, but in any event, bear with me because I didn't understand it.

A Be glad to.

Q Now, in the Senate -- we will separate the two now. In particularity, in that two hours, then, what specifically did you find against this Senate reapportionment bill that caused you to vote against it?

A Well, one, I was not satisfied with the district from Waco to Abilene.

Q Yes, sir.

A Second, the disruptions of the senatorial district in a section of Texas I am very familiar with, primarily Senator Patman's district.

Q You are from Brenham, aren't you?

A Yes, sir. And I think that a much better pattern could have been worked out in the West Texas-Abilene area, which is presently represented by Senator Ratliff, and the people in that area, without some of the objections being advanced from some of the metropolitan areas, and since I had no part in drawing the lines within those counties, the -- I decided to vote against the proposal.

Q I take it, then, that your reasoning, of course,

based specifically on these particular things, but would this also include the fact that you felt they had not met the constitutional requirements and the state requirements -- and/or the state requirements -- in regards to the redrafting of the senatorial districts?

A I was probably more baffled as to the guideline that was being used than as to passing judgment on its merits in its final form, should I say. I was in search of a guideline that was going to be used.

Q Well, now, I copied down what I considered -- what I understood you to say were your guidelines, which were, one, population?

A Yes, sir.

Q Two, community of interest; three, compactness and contiguity; and four, the interest of the people, together with their spokesmen of the people, which would be their elected officials, I suppose?

A Yes, sir.

Q And -- well, I believe that is where you stopped. Pardon me. Go ahead.

A No, I was just going to add the reason I added the latter, I don't know -- I have read a lot of case law and I haven't ever found the latter mentioned -- I want to acknowledge that -- but as a presiding

officer, I think it is a good trait for a presiding officer to be concerned about the wishes of the spokesmen of the people, and that is the reason I put it in as a criterion that I personally acknowledge.

Q For the purposes of our little discussion here, I don't disagree with you, but I simply want to know what motivated your decision to not approve of the plans. Number one, was it personal, or number two, was it that you felt that the committee or the board did not follow the guidelines?

A As I said, I don't -- I was a little baffled on the guideline that was used. I do think that -- I voted against it because I thought that my objections outweighed my satisfaction to the bill. That's the best way I know to put it.

Q Well, it's a little hard for me to understand -- and I don't want to belabor the point. Would you say it was for personal reasons, then?

A Not in a personal sense, in that I had -- I didn't even have that much personally involved in Senate redistricting other than try to do a good job as a member of the board and be an active member, so this is what I was, so it would have to be on the criteria, I would think.

Q All right, sir. Then it would have been that you

felt that they did not follow the constitutionally required guidelines, is this correct?

A Well, I think maybe a better bill could have been drawn within the framework of the guidelines that I thought should be considered.

Q And when we say the guidelines that you think should have been considered, in order to clarify this, we are talking about the population, equal population?

A Right.

Q The community of interest, the compactness and contiguity?

A That's right.

Q And the interest of the people?

A That's right.

Q Mr. Metscher, are you a lawyer?

A No, sir.

Q Now, you have of course read, as you indicated, numerous of these decisions and the laws as handed down by both the federal courts and by the state, is this correct?

A Yes.

(Discussion off the record)

Q Did you in your consideration of the plans and your interest, activity on the committee, did you rely on the Attorney General, Attorney General Martin,

for legal help or advice concerning constitutionality or the legality of the plan that would be drawn?

A We acknowledge the Attorney General's office as the arm to furnish the legal advice.

Q Well, did he from time to time advise or did he at the time the plan was submitted on the Senate -- I will try to separate the two -- did he advise you as to the constitutionality of, the legality of the plan?

A Yes, sir. I think that he made the statement that it was a plan that would in his mind be acceptable and constitutional.

Q You made mention a while back about -- I forget the way it was phrased, but someone in your office. Did you have a committee or a staff or a person or persons working with you assigned by you from your staff on this redistricting?

A Yes, as we go from Senate into House, on House redistricting, we did. I had House members assisting me in the drafting of I think seven statewide proposals plus four additional modifications; about eleven plans were drawn.

Q Now, you talk about House members; you are talking about elected officials---

A Yes, sir.

Q ---from various sections of the state?

A Yes, sir.

Q I meant principally, though, of your own staff, did you have anyone in particular that was working on it?

A No. My staff tries to be helpful to House members whenever they want help or they need maps or they need an adding machine if we have one available, that kind of stuff, but the work was---

Q But not assigned directly to this particular chore?

A No, sir. I worked with the Legislative Council on it.

Q Yes, sir.

A Mr. Johnson and Mr. Potter.

Q Do you of your own knowledge know who actually drafted, we will say the Senate redistricting map?

A No.

Q In its final form?

A I think it was drawn in the Lieutenant Governor's office, some of the staff members assisted him, and the work of the Legislative Council.

Q In other words, possibly in conjunction with Mr. Spellings, Mr. Hooser, and Mr. Johnson and Mr. Potter or whomever helped in that office, is this it?

A Yes, sir; yes, sir.

Q And when I -- were first presented a House plan, when and where -- I know when -- where did this occur and who was there?

MR. CUNNINGHAM: Which plan are we talking about?

MR. EASON: We are still on the Senate.

MR. CUNNINGHAM: I did not understand.

A I think the Senate redistricting plan was presented to my office one afternoon, and I really don't remember who brought it by. Robert Spellings brought it by and gave it to Rush, who in turn gave it to me, and then Robert came back and visited with me in the office and said that they had come up with a complete package together, and that it had the support of at least three members of the board, and the chairman was going to call a meeting for the next morning at a certain time.

Q And it was already signed by Attorney General Martin, Lieutenant Governor Barnes, and Mr. Calvert?

A This is the way it was explained to me, yes, sir.

Q Well, I mean were their signatures on it?

A No, I didn't see any signatures. I had heard that these three members of the board had approved the plan or would support the plan, however you want

to phrase it.

Q I am going to show you the Texas Senate Districts as enacted October 15, 1971. This of course is the plan, the map of the plan that was presented to you, is it not, as near as you can recall from your memory?

A This is the board's plan.

Q This is the one that was approved and you refused to sign; is this correct?

A That's correct. That's correct.

Q All right, sir. And you mentioned specifically, I think, the McLennan County west?

A Yes, sir.

Q And I think something -- Senator Patman's district down there?

A Yes, sir.

Q Did you take any note of Senatorial District 21 at the time?

A Not expressly, no, sir.

Q I will call your attention---

A No more than the fact that I knew from previous reapportionment plans that Bexar County would be entitled to two senatorial districts, which I thought they should have, which they did receive. As far as how the surplus was treated, I can't testify to,

because I played no part in the drawing of those lines.

Q You had been enough to convince you that it wasn't acceptable to you after viewing the -- would that be the 24th which you took exception to?

A Twenty-fourth, eighteenth.

Q And the eighteenth?

A And thirtieth.

Q Yes, sir. I will ask you at this time -- now, you have previously worked on redistricting plans, and you have explained the criteria pretty much what the court set out. I will ask you, based upon your work, your experience, your knowledge, your serving of the people of the State of Texas and from your district, whether or not you have an opinion concerning the compactness and the contiguity of Senatorial District 21. I want to call your special attention to the northernmost boundary of this district, which is possibly set out a little better in this blow-up inset which comes around 19 and 26 and takes in the northern part of Bexar County, together with Alamo Heights and Terrell Hills, the northeastern part of the City of San Antonio.

A I am not -- I wouldn't say I would have done it the same way, and yet I am not in a position to criticize

because I don't know the census tracts, if they tried to stay within city limits or if they went out of city limits and things of that nature.

Q All right, sir. Are you familiar with the City of San Antonio?

A I do know that that is -- I just couldn't say whether I would have drawn it in that fashion or not.

Q Now I will ask you -- I have a tendency to go too long on these questions. Let me be a little briefer. Do you consider this to be a compact and contiguous senatorial group -- senatorial district?

A Well, I would imagine maybe 19 and 26 would argue it is, but 21 would be a question mark. I don't know.

Q Let me ask you this.

A I was not compiling the testimony for senatorial redistricting, and I would like to be as much help to you as I can, but on Senate redistricting I tried to be an active member but I did not offer the leadership, nor was I part of the pattern of drawing it, putting it together in that respect.

Q Yes, sir. I understand that.

A So I was more or less a voting member with respect to Senate redistricting.

Q I understand that too, but by the same token, I think that you are, certainly by your experience and

qualifications, I believe that you are familiar with redistricting, and as you have pointed out, one of the guidelines is compactness and contiguity?

A Yes, sir.

Q Now, if you were to take a central point of the 21st senatorial district, could this not have been made more compact by going straight north into, say, Senatorial District 19 than going around 19 and 26 and coming in on the north and northeast part of Bexar County?

A Yes, sir.

Q It would have been more compact, would it not?

A I am sure it could have been argued that way.

Q Are you familiar with the northeast part of San Antonio -- let's say Alamo Heights and Terrell Hills? I understand that this would be a degree, but I mean do you know where they are?

A Yes, sir, I think I know where they are, but I don't -- I couldn't testify to the overall makeup or philosophy. I think that is probably more of a conservative type area. I am not that familiar with it.

Q Yes, sir. Well, I might just for clarification here say that they have a Republican County Commissioner and a Republican Justice of the Peace.

A Yes, sir. And here again the House members, you know, have been running at large in Bexar County.

Q This is true.

A So I am not familiar with the divisional aspects of Bexar County to testify, especially as to fairness, of my own mind.

Q Well, assuming what I have told you---

A But I have never heard any terminology used of trying to gerrymander or discriminate this district but I do acknowledge it could be drawn different. I remember I had some boys from the Valley here who violently objected to the dividing of Duval and Jim Wells County in this particular area---

Q Well, with the---

A ---and I have some people from this area who would have preferred to, say, stay with the 18th, but I do know when you take something out of a district, you have to add something back, and I wasn't that close to the drawing board on Senate redistricting.

Q Well, Speaker, for the purpose of this discussion, we will -- I will be frank to admit to you that we could work on this until doomsday and there would certainly be certain people that would be dissatisfied or unhappy with a particular district as it might be drawn.

A Yes, sir.
Q Because it can affect personal reasons and so forth. I am simply trying to stay within the guidelines which you have already stated that you followed and should be followed.
A Yes, sir.
Q Now, with the premise in mind, assuming what I have told you is true about the Republican County Commissioner and Republican J. P. and the fact that this is a -- I forget the word, but a rather affluent area of San Antonio, would you consider that this northern part of this district has a community of interest with, say, the people in Starr, Duval, Jim Hogg, Zapata County?
A No, I would say you could acknowledge a distinction there.
Q That they would not have a community--
A Yes, but I think we also have to acknowledge that any time you take a surplus from a metropolitan area and tie it with a rural area, that you do have some problem there.
Q You would run into--
A Yes, sir.
Q --some distinctions, wouldn't you?
A Yes, sir. I remember the time on the Congressional

when you had San Antonio going to Odessa and the Midland area, and we had this same argument.

Q Yes, sir.

A But I still stay with my guidelines because in Houston we were supported by the fact that Mr. Bush and Mr. Archer were well pleased with the work that I had done on their redistricting in that particular county. So I want you to know that I, from my point of view, I do try to implement the guidelines that I mentioned the best I know how.

MR. EASON: I believe that's all. Thank you very much.

Questions by Mr. Cunningham:

Q I am E. Brice Cunningham. I represent Councilman George L. Allen, School Board Trustee E. J. Conrad, and Representative Ian W. Holmes, who are plaintiff intervenors, and we are concerned with the House redistricting plan.

Did you receive a letter from Representative Holmes asking you to vote for a single member plan for Dallas County?

A I think I did.

Q Okay.

A Yes, sir.

Q Did you receive a similar letter from Councilman George L. Allen asking you to vote for single member districts?

A I would have to check, but I believe I did.

Q And also Doctor Conrad?

A I don't know, but there again, I could have, yes, sir.

Q Well, did the board at any time consider a single member plan for Dallas County -- the Texas Redistricting Board is what I am talking about.

A No, sir, I think the only redistricting single member plan that I saw for Dallas was back during the regular session.

Q Okay. Did Senator Oscar Mauzy in one of the public meetings offer a single member plan for Dallas County?

A He testified for single member districts, and whether he had one reduced to a plan on the map, I am not sure. It seemed like he did, but I know he did come before us and testify in behalf of single member districts for metropolitan areas.

Q Did you receive a plan for single member districts from a student at the University of Texas at Arlington, probably the day before -- I think the day before you signed this -- four of them signed this

bill?

A Yes, sir, I think we got one from Arlington.

Q Okay. I didn't -- maybe I missed your answer. What were your reasons for not signing the House redistricting plan that was adopted by the other four board members?

A I opposed the plan, one, because I felt that it had deviated, one, too much from the wishes of the majority of the members of the legislature. Now, you kind of have to put yourself in the presiding officer's position to appreciate this, because prior to the drafting of all our proposals, I studied the minutes, the requests and the wishes of the members of the House, even those that had opposed me or had opposed the plan that we initially planned.

My purpose on the redistricting board with respect to House redistricting was made public, and that is that I wanted to cure the objections that the court had advanced against the initial bill that we passed during regular session, and you know the House did pass a plan, whereas the Senate did not. But I wanted to cure those objections, and those objections basically hinged from the pattern in Midland, Nueces County, Grayson County, with inconsistencies in the Panhandle and the Valley. Those

were the five major points. Then of course there were debates raging with respect to metropolitan areas.

I made my position clear that I thought a single member would probably be better in Houston than to run Harris County at large, but I did think for the best interest of Harris County, some type of district larger than individual but less than at large would be for the best interest of Houston and best interests of public. You know, these two voting were biggest thing because for the simple reason they have got seven people running for them. This is some of our reasoning in this area.

The next one, in addition to going against the wishes of the members, I doubt if the plan was for the best interests of the majority of the people, and there were definitely unnecessary pairing of incumbents involved in the bill. These may not be in line with the initial criteria; they are also practical aspects of redistricting. You may call them administrative arguments rather than technical or legal arguments but they were practical points, and as presiding officer, I could not in good faith vote for a proposal that I thought was not acceptable to these colleagues, plus the fact

that I think we had drawn a proposal that was really better than the one the board adopted.

Q If a proposal had been drawn for Dallas County that included single member districts and with your other suggestions, would you have signed it?

A I am not -- have not been an advocate of single member districts. I have been a strong advocate of trying to keep the people close enough to its representation and be able to acknowledge a reasonable number. In other words, I kind of like the pattern that we had working in Houston ever since we implemented Baker v. Carr, and this has not been struck down by any court that I know of at this time, and I think the type of representation that we had, we could say that we were not really discriminating against any group of people in our state, and certainly I wouldn't want any part of any plan that was designed for that purpose.

MR. CUNNINGHAM: Thank you, Mr. Speaker.

Questions by Mr. Greenberg:

Q Mr. Speaker, I am Bob Greenberg, and I represent the plaintiffs, Johnny Harriett et al. in the Dallas case insofar as the House is concerned.

Do I understand from the answers that you

been given that while you did not sign or approve the House plan as adopted by the redistricting board, the reasons for your refusal to go along with it did not relate to the fact that metropolitan areas other than Harris were drawn in multi-member districts?

A That would certainly have to be one of the arguments.

MR. CHENOWETH: I think that's all. I think everything else has been covered. Thank you, sir.

CROSS EXAMINATION

Questions by Mr. Lowe:

Q Mr. Speaker, I am Earl Lowe and I represent Roy Orr, the State Democratic Executive Committee Chairman, who is one of the defendants in this case. I would like to ask you, based on your many years of experience in the legislative halls, if there aren't many arguments and reasons to vote against a piece of legislation other than a constitutional reason?

A That's correct.

Q So then within the framework of the constitutional guidelines, there are often bills that might be desirable to one person and undesirable to another, although both might be constitutional, is that

right?

A That is correct. I might acknowledge that this is a role that I am probably the majority of the time pushing for and defending a proposal that was passed or had to be passed, and my situation is somewhat different in this case, but you are absolutely in my mind correct in saying that you can -- there are other arguments rather than just constitutional ones for opposing a piece of legislation.

Q And would it be fair to say that your reasons for not signing these bills were for reasons other than constitutional reasons?

A Well, the only point that I mentioned today that when I voted no, I made it publicly, and they asked me about the constitutional question, and I said I thought there could be a serious constitutional question raised, but that I didn't know if I would be joining in any suit because I didn't know how much time I would have to develop that argument.

I gave at that time two points, I think the El Paso situation could be questioned, and I think you have got the consistency argument also to look at.

Q But if a constitutional question was to be considered, the constitutional question was not per se single

member districts versus multi-member districts?

A That is correct, and I don't know of the court ever ordering some one or large over the situation we have in Shelby.

Q Mr. Speaker, I believe our record here shows that we currently have in the present law, as well as in the law that this bench adopted, 125 districts in the House of Representatives of Texas, is that correct?

A Have a hundred and fifty members. Yes, sir.

Q A hundred and fifty members. Out of those hundred and fifty members, how many of them are elected from single member districts, as opposed to multi-member districts, do you know without?

A I would think the number is pretty well equal. Now, your hundred members, we will have 75, and Dallas, we will have 25.

Q Eighteen.

A Eighteen, and San Antonio, we will have eleven; Fort Worth, we will have eight; El Paso has four; Jefferson County has three; Bowie County has three; Galveston County has two; Bridge County has one and the surplus -- I would say it's almost even now between single member districts and multi-member districts.

Q How many does Travis County have? I don't believe you mentioned Travis County.

A I didn't mention Travis. Travis County has four.

Q Four?

A Yes, sir.

Q If we didn't miss too many of them---

MR. MCDANIEL: Lubbock, Jefferson---

A I missed Lubbock.

MR. MCDANIEL: ---and Hidalgo, I believe.

A Yes, Hidalgo, and then Temple has one and a surplus and -- Bell.

Q But those are -- Temple is still single member because it is one and a surplus?

A Yes, sir.

Q All right.

A And Wichita Falls, instead of having two, will now have one and a surplus.

Q Now, I have asked you these questions to put it in context, Mr. Speaker, as to that I am referring to here.

We have, as one of the groups of persons who are attacking this bill, a number of Republicans from various places in the state, and they allege that in some instances that multi-member districts discriminate against Republicans. Since we have

many single member district members elected to the legislature, are you in a position to tell us under the single member philosophy, how many Republicans are elected from those single member districts, do you know?

A Well, you have a member from Midland, a single member district. You have Representative Christian, from the Panhandle, a single member district. One of the multi-member districts in Houston, you have six out of seven that are Republicans.

Q Six Republicans?

A Out of seven from that area; and of course then you have one from Dallas and you have one from Travis, and I am sure I am overlooking one but I don't intend to. No, that is ten, isn't it?

Q That's ten.

A That's right.

Q Mr. Speaker, based on the figures that you have given us currently, it looks like in the areas where they are elected by single member districts, that the Republicans have only elected two from single member districts, and in multi-member districts, they have elected eight; is that about right?

A Well, it can certainly be argued that way, yes, sir.

Q I mean those are the---

A Yes, sir.

Q ---present facts.

A Yes, sir.

MR. LUNA: That's all; thank you, sir.

REDIRECT EXAMINATION

Questions by Mr. Bacon:

Q Speaker Hutcheson, I have been confining most of my interrogation to the Senate redistricting bill, the reason being is trying to facilitate and expedite this matter, because Mr. Idar from San Antonio, who is not here, has been covering the House.

A Yes, sir.

Q And I didn't want to be repetitious. Since he is not here, I would like to ask you a few questions concerning this.

A I would be glad to try to answer them, sir.

Q Now, you have stated your opinion, I think, to the effect that you do not feel single member districts from metropolitan areas is necessarily advisable; is this correct?

A I have argued that it is not in the best interest of the metropolitan areas.

Q All right, sir. Now---

A I would give you a speech on that but I don't think

it is appropriate here.

Q I am trying to help you get back. Would you---

A And it is not based on one party versus another. I want to make that clear.

Q All right, sir.

A I adopt the idea that I like to see effective legislators at work rather than just concept spokesmen, and this is part of my argument for that in redistricting.

Q I believe you said that San Antonio would have eleven representatives, is this correct?

A Yes, sir.

Q Do you have an opinion as to the cost of campaigning in eleven single member districts in Bexar County as opposed to eleven at large candidates?

A No, I am not familiar with the figures. I am sure that the cost factor would have to be naturally greater, although it has been my experience that when it gets down to the latter part of the campaign, there is a lot of members running by slates, as well as things of this nature.

Q Well, do you think that necessarily, slates are to the best interest of the people?

A Well, it's kind of like parties, whether you want to emphasize slate is the important thing or party

is the important thing or the individual. No, I think the more the people can know about their representative, the better things are.

Q But don't you think that in an isolated or single member area, that the constituency would really know more about the candidate and the candidate would know more about the constituency than in an at large district, in one where there is some eight hundred and some odd thousand people, such as Bexar County?

A Well, when I said large, I said earlier in my testimony that I think the number should be kept at a reasonable number, where an average citizen would be motivated to try to know each and every one of them on a personal basis.

Q Yes, sir.

A And this is the reason I felt like that 23 in Houston to some degree would be unreasonable to run at large, and I stated earlier that I was against the at large position for Harris County. I think that the modified approach was very acceptable.

Q All right, sir. Now, do you feel that there would be a closer relationship between eleven single member representatives in San Antonio and one-eleventh of 830,000 people, than there would be eleven representatives elected at large being responsible for 830,000

people?
A On the closeness factor, it would probably have to be with the individual district.
Q Yes, sir. Do you think the cost of the campaign would be less? Now, of course, I understand in this modern day where you have the television media and so forth, that you can't isolate particular districts, but let's take such things as, well, back in Washington County, for instance, you do a certain amount of running around in your car and shaking hands and so forth, isn't this true?
A I like to do it, yes, sir.
Q It gets you close to your people and your constituency?
A Yes, sir.
Q This of course would be less expensive in single member districts, wouldn't it?
A Yes, sir.
Q Also mailing, fliers, things of this nature that wouldn't have to go to the entire county, would they?
A That's true.
Q And would be less expensive?
A Yes.
Q So there are certain elements, at least, of a campaign

which would be reduced cost-wise by having single member districts?

A Yes, sir.

Q Are you aware that Bexar County, roughly, has about 50 per cent Mexicans?

A I didn't know the percentage; I knew they had---

Q Well, there is a lot of them, isn't there?

A Yes, sir.

Q Do you feel that if you were to have single member districts in Bexar County or -- all right -- that there would be more or less Mexican representatives? In other words, that the Mexican people would have more or less representatives in the State Legislature than they now have?

A I really don't know. I have served with some on each occasion. I believe sometime we would have one or two more than we would at other times. I have never really heard it argued by their group that they would have increased representation.

Q Well, let me ask you this. Now, how long have you been in the House?

A Ten years.

Q All right. Since you have been in the House you have, of course, worked closely with or worked with the San Antonio delegation from time to time on various

hills?

A Yes, sir.

Q Assuming my figures are fairly correct, have they ever during this ten-year period that you have been there had 50 per cent of the representatives from Bexar County Mexican Americans?

A No, I don't think so.

Q All right, sir. One further: Assuming that San Antonio is approximately 10 per cent Negro, have you ever known of a Negro representative from San Antonio?

A No. Let's see. They had one candidate or possibly two last time, but I don't recall serving with any of them.

Q Yes, sir. Would you have an opinion concerning whether or not -- we have already established, at least in some areas, that it would be more expensive to run at large than in single member districts. Would you have an opinion whether or not that the additional cost of campaign would adversely affect the Mexican American or the Negro, as compared with the Anglo?

A I certainly wouldn't think that it should.

Q Well, would you think that the average income of the average Mexican in San Antonio is as high as the average white? When I say "white," I don't know how

to distinguish this. I know that they are Caucasian.

A Yes, sir.

Q But I mean call them Anglo or whatever you want to -- Gringo.

A I don't know---

Q That's a good---

A I don't know the pay scale for Bexar County. I am sure it may not be as high, but then again, I don't --it's another interesting study to see what per cent of campaign expense is borne by the candidate himself, as well.

Q Well, that's true too, but wouldn't it also be true -- for the moment we will turn to the Negro, the Negro candidate -- number one is, you wouldn't think that his income would be as high as the average Caucasian candidate, would you, from Bexar County? I am talking about the average across the board.

A Yes, I'm sure that is probably correct.

Q And by the same token, wouldn't it also be true that his constituency would not be as wealthy; in other words, those that you brought in who was paying for the campaign---

A Yes, sir.

Q ---his constituency pro rata would not be as wealthy across the board as the white candidate's, would it?

A That is probably correct.

Q Then to some degree, at least, this would be an adverse -- work as an adverse result against the Negro or the Latin American candidate, wouldn't it, in multi-member districts?

A Of course, this really depends on how a candidate handles his campaign. I have always tried to discourage and stay away from putting candidates into certain type of planned categories. I have always liked to see a public servant try to accept the responsibility to do good work for all the people in his district.

Q Yes, sir, and I appreciate your thoughts and agree with your thoughts.

A Most of the appropriations I work for in my district go for black projects, and I think it's -- so the reason I mention that is, I am not just here trying to prolong the point. I really feel that way. I think that the ballot should be to the extent that an elected official should be concerned about all the people in his respective area and do as good a job as he possibly can for each and every one of them.

Q I appreciate your feelings and I agree. But I still want to ask you this one question. Maybe the Negro doesn't feel this way and maybe the Mexican American

doesn't. Wouldn't it actually adversely affect the Negro population and the Mexican American population, based upon the economic factors that we have already discussed, to run at large rather than from a single member district, all other things being equal? Now, I am not talking about contribution from various personal interest groups. Wouldn't it if each man went up there and paid his filing fee, which I am sure would be the same in any regard, but when we take into consideration mailing fliers, the amount of people he would have to contact and so forth, if all other things would be equal, then the single member district man would spend less on his campaign than one running at large, wouldn't he?

A I think that's true.

MR. EASON: I believe that's all. Thank you, sir.

RECROSS EXAMINATION

Questions by Mr. Curry:

Q Mr. Speaker, if a man runs in a single member district and he has two opponents, and one of them spends a lot of money, isn't he likely to spend more money than otherwise?

A In a single member district if one of them spends a great deal of money, it's going to have its effect

on the other candidates.

Q He is going to have to respond to that?

A That is correct. But I want to say on the single member district, when metropolitan areas find that all are equal from effectiveness of representation advantages, it has been a tremendous thing.

I have had rural boys from other single member districts criticize my position and say you ought to put the metropolitan boys in single member districts. But the big problems that are facing the state are problems that need to be answered in the metropolitan areas of Texas, and I want to help the metropolitan people solve their problems, and we are looking for not only voting members out on the floor of the House, but we are looking for effective workers to carry these projects and be equally as concerned about that as they are making a press release in the press room. That's all I have to say on that.

MR. EASON: Just one other question. You, sir, changed the facts on me.

REDIRECT EXAMINATION

Questions by Mr. Cunningham:

Q Just one other question, Mr. Speaker. My impression, then, from your testimony is that for Dallas County,

you would favor a -- not a single member district but a district which are not countywide but -- not as large as a county but larger than a single member, somewhere in between?

A I would have accepted that type of plan.

Q Yes, sir.

A And I worked it out with some of the boys who are known as more of a liberal concept from Dallas County but yet were probably not the majority viewpoint from Dallas County at the last session of the legislature.

MR. CUNNINGHAM: That's all.

GUS MUTSCHER

THE STATE OF TEXAS I
COUNTY OF TRAVIS I

Subscribed and sworn to before me, the undersigned authority, on this ____ day of January, 1972.

Notary Public, Travis County, Texas

THE STATE OF TEXAS I
COUNTY OF TRAVIS I

I, Opal Looke, a Notary Public duly commissioned and qualified in and for the County of Travis, State of Texas, do hereby certify that pursuant to notice issued and the agreement herein set out, there came before me on the 29th day of December, 1971, at 3:00 o'clock P.M., at the Supreme Court Building, in the City of Austin, Travis County, Texas, Gus Mutscher, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in these causes, that he was thereupon carefully examined upon his oath and his examination reduced to writing by me and under my supervision; and that the deposition is a true record of the testimony given by the witness, as shown by my shorthand notes.

I further certify that I am neither attorney or counsel for nor related to or employed by, any of the parties to the action in which this deposition is taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

In witness whereof, I hereunto set my hand and affix my notarial seal this ____ day of January, 1972.

Opal Looke, Notary Public, Travis County, Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CURTIS GRAVES, ET AL)
(A-71-CA-142
VS.)
(
BEN BARNES, ET AL)

DIANA ROBERTSON, ET AL)
(A-71-CA-143
VS.)
(
BOB BULLOCK, ET AL)

JOHNNY HARRIOTT, ET AL)
(A-71-CA-144
VS.)
(
PRESTON SMITH, ET AL)

VAN HENRY ARCHER, JR.)
(A-71-CA-145
VS.)
(
PRESTON SMITH, ET AL)

o-o-o-o-o-o-o-o-o-o-o

APPEARANCES:

STUART NELKIN, Esquire,
DAVID BERG, Esquire,
Appearing for Curtis Graves, Et Al;

DAVID M. RICHARDS, Esquire,
Appearing for Diana Robertson, Et Al;

ROBERT M. GREENBERG, Esquire,
Appearing for Johnny Harriott, Et Al;

MICKEY McGUIRE, Esquire,
NATHAN W. BARON, Esquire,
Appearing for Van Henry Archer, Jr.;

B. BRICE CUNNINGHAM, Esquire,
Appearing for Intervenors Conrad, Et Al;

ED IDAR, JR., Esquire,
Appearing for Intervenors in the
Tyler case;

WALTER IRWIN, Esquire,
CLEO STEELE, Esquire,
Appearing for Intervenors Washington,
Et Al;

EARL LUNA, Esquire,
Appearing for Defendant Orr;

SAM McDANIEL, Esquire,
AL CURRY, Esquire,
Appearing for Defendants.

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DEPOSITION upon oral examination, of the witness, GREGORY DREW HOOSER, taken on behalf of the Plaintiffs, in the above entitled cause, wherein the above named persons are the Plaintiffs and the above named persons are the Defendants, pending in the United States District Court, for the Western District of Texas, Austin Division, before JACK D. SYKES, a Notary Public in and for Travis County, Texas, on the 28th day of December, A.D. 1971, in the offices of the Attorney General, Supreme Court Building, Austin, Travis County, Texas, between the hours of 2:00 o'clock P.M. and 3:45 o'clock P.M., pursuant to the following agreement of counsel:

****

MR. RICHARDS: I didn't know whether Sam wanted to treat it just by notice or how you wanted it.

MR. MC DANIEL: I have no objection to treating it as if it were taken by notice, and my only thing is, I do want -- I am not going to waive signature on them. Other than that, why, we can agree that it can be used and that you can reserve your objections until the time of trial, as far as I am concerned.

MR. RICHARDS: All right. And, so we -- do I understand that we are all in agreement that we will waive the provisions of the federal rules that require the witness to be absent in order to use the deposition, that the deposition may be used -- that we will waive the provisions of the federal rules that require the witness to be unavailable in order to use this deposition, and that this deposition may be used as testimony either before the Court or before the Master; is that correct, without proving the witness's unavailability?

MR. MC DANIEL: I have no objection to that, although I don't want that stipulation to indicate that I am agreeing to present the witness's testimony strictly by deposition.

MR. RICHARDS: I understand. You are not waiving the right to call him as a witness?

MR. MC DANIEL: That is correct. That is

correct.

MR. LUNA: For the state chairman, we do not waive our right to cross examine the witness at the trial, and in the event he should not be available at trial, we do not then waive the use of this -- if he is available, but is not placed on the witness stand, we don't waive our right to cross examine him at the trial.

MR. RICHARDS: Well, let me be sure I understand. Suppose that the witness is not called as a witness at the time of trial, what is your position with respect to the use of this deposition at the time of the trial?

MR. LUNA: I reserve the right to examine him in person.

MR. RICHARDS: Well, then, at least you are on notice from me that it is going to be my position that if you have questions to ask the witness, you had better ask them today, because I will intend to offer this deposition as evidence at the time of trial, and you are here pursuant to notice, and at least you have the opportunity to examine him, and it will be my position, if you don't afford yourself that opportunity today, that we will offer the deposition as firsthand testimony.

MR. LUNA: I understand.

MR. RICHARDS: All right. Sure.

MR. LUNA: I may ask him some questions today, but I am simply not waiving any of my rights by participating in this deposition that I don't automatically waive thereby.

MR. RICHARDS: Is there anybody else who has got a position, attorneys who are present who want to put any position of records in the case?

--*-*-*-*-*-*-*-*-*

GREGORY DREW HOOSER, a witness of lawful age, being first duly sworn on the above cause, testified on his oath as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. MELKIN:

Q Mr. Hooser, would you please state your name?

A Gregory Drew Hooser.

Q For the record, my name is Stuart Melkin and I am an attorney, along with Mr. Barg, for the Plaintiffs in the Houston case. The questions that I will be asking you, for the most part, will deal primarily with the Senate redistricting.

A Uh huh.

Q Now, have you ever had a deposition taken before?

A Yes, sir, I have.

Q All right. And, in preparation for this particular deposition have you conferred with your attorneys?

A Yes, sir, I have.

Q And, what attorneys would that be?

A Mr. Sam McDaniel.

Q Would that be today or before today?

A Today.

Q For the first time?

A For the first time.

Q Has he given you any particular instructions on how to respond to questions?

A No, he hasn't.

Q Now, what is your address?

A It is 1206 Rock Cliff Road, Austin, 78746.

Q How old are you, sir?

A I am twenty-five.

Q Are you married?

A No.

Q And, what is your occupation?

A I am a law student and —

Well, part time during the last session of the Legislature I served as clerk to the Senate Committee on Congressional, Judicial and Legislative District.

Q All right. And, what year are you in in law school?

A Third year.

Q Okay. Do you expect to graduate in June?
A I graduate at the end of August.
Q Do you have any plans as to what you will be doing after graduation?
A Not at this point.
Q You have not accepted employment of any kind?
A No, sir, I have not.
Q All right. As I understand your position, you were a clerk to the Senate Committee on Congressional, Senatorial and Legislative -- representative redistricting?
A Yes, sir.
Q All right. And, who would be your immediate superior?
A Senator J. P. Word of Meridian.
Q And, was Senator Barbara Jordan of Houston vice chairman of that particular committee?
A That is correct.
Q Can you briefly outline the functions of that committee?
A The functions of that committee were to draw up redistricting bills for the House and Senate and for the Congressional District as well as certain judicial districts.
Q Did you participate in the drawing up of the plans of Congress as well as the State Senate and State House?
A In participation, yes. I participated to an extent.
Q Okay. Did any of the bills that you participated in

drafting become law?

A Well, the bill that was adopted by the Conference Committee between the House and Senate on, I think, the third or fourth day of the first special session did become law.

Q All right. And, what particular legislative body did that redistricting?

A That was a redistricting bill for the Congressional Districts.

Q Okay. And, what about for the State Senate?

A No State Senate map was ever adopted into law.

Q And the State House?

A The House of Representatives passed a bill, the Senate concurred, and it did become law.

Q All right. Now, with regard to the State Senate, did your committee report a Senate reapportionment plan?

A There was no report, formal report, from the full Senate Redistricting Committee.

Q All right. Is this committee divided into subcommittees?

A Yes.

Q All right. And, could you list the subcommittees?

A The membership?

Q No.

A There was just one subcommittee on the House and one subcommittee on the Senate.

Q And, when particularly did you fall into all this?
A Let me back up on that last one. Yes, that is correct, and one on the Congressional district.
Q Where, in particular, did your functions take you?
A My functions were to provide the members of the committee with population data, with maps from which -- which to use in their own efforts, to provide them with, oh, computer -- not computer checks -- calculator checks and that sort of thing -- check mathematical data and just generally run errands.
Q Who were the members of that committee in addition to --
A There were nineteen members of the full committee.
Q I see.
A But I don't have a list of them.
Q What about the Senate subcommittee; would you know those?
A I think there were seven to eight on each subcommittee.
Q There were three subcommittees?
A I believe there were three.
Q All right. Now, in accordance with your function did you also have the responsibility -- or were you called upon to provide racial data of census tracts or Senatoral areas or --
A We had --
Q -- county areas?
A During the regular session of the Legislature --

Let Me see. I am not positive whether we had ethnic breakdowns or racial breakdowns. I don't believe that information was available during the regular session. Now, it became available, I believe, shortly thereafter.

Q All right. Did the work of your committee end with the close of the regular session?

A No. The committee was held over to assist the Legislative Redistricting Board when they went about their efforts.

Q And that would be both with respect to the House and the Senate?

A That is correct.

Q Now, did you have any -- were your duties the same in that capacity?

A Uh huh.

Q All right. Did you work in contact with any particular members of the Legislative Redistricting Board?

A With all of them.

Q All right. Would those be personal relations between you and each of them? Were you ever called upon to provide specific information to any --

A Certainly, with all of them.

Q Did any of that information include racial breakdown of counties?

A Yes. We had racial breakdowns by -- as I say, after the regular session. I think even after the special session too.

Q Do you know whether or not the racial information that you had was taken into account in drawing Senate lines?

A No, I don't know.

Q So,the fact that you had it was really irrelevant to the board?

A I have no way of knowing how relevant or irrelevant it was. I provided the information and that was all.

Q Who, specifically, requested you for that -- for racial information?

A I made it available to all members.

Q Was it done pursuant to a specific request by anyone or more than --

A I don't recall. I think I went ahead and just gave them the information as part of the whole deal.

Q Where did you get it?

A I got it from the census bureau.

Q And, you felt so spunky that you felt you would present that to the people?

A Sure, to give them everything that could possibly be used.

Q All right. Did you also have a request, or did you furnish -- or did you furnish a history of voting patterns

in any other counties?

A We had some information, some voting pattern information.

Q And, could you describe the nature of that information?

A Just a general breakdown which was through the Secretary of State's office, which has the election figures for State-wide elections throughout the -- the last -- Well, they keep the official public records as certified by the legislature.

Q All right. And, do you know whether or not they were also a part of the information that each member of the Legislative Redistricting Board had at his disposal?

A I would be guessing if I knew that everybody, you know, used it or had it or not.

Q All right. But, to your knowledge it was available to them?

A Oh, yes. It is available to anyone.

Q That would have been voting patterns in State-wide elections from the time that the State of Texas started keeping records?

A Voting results.

Q Voting results?

A Yes. It is available to the general public in the Secretary of State's office.

Q When you say "State-wide elections" are you speaking of State Senators and State Representatives?

A A Let's see. I think we had some data on State Senatorial elections. We did not have any on --

Q All right. Did you have that data on Harris, State Senatorial --

A Yes.

Q And, did you in the course of your duties provide that particular information to the members?

A No.

Q Now, with regard --

Are you personally familiar with the congressional plan that was adopted?

A Fairly familiar.

Q Well, before I get to that --

I am still a little confused. I am not sure if your functions were purely clerical or if you actually took part in some decision -- in the decision making process?

A Not in the decision making process.

Q So, your total function was to supply information to other people?

A I was, you know, when someone would say "Well, does this work out" or "Are the numbers correct here" I would check through that. So, I don't know whether you would call that decision making or not; all I did was simply try to check out a suggestion that was made in one area or another.

Q The suggestions that were made would be checked by you only for numerical accuracy?

A Yes.

Q And nothing else?

A Not that I recall.

Q All right. Now, back to the question of the congressional plan, you say you have some specific or general understanding of what that --

A General knowledge. I don't think I can answer specifics. I haven't looked at the map in a long time.

Q And the general knowledge you got would be by having worked on the numbers, right?

A Right.

Q All right. Now, you are aware that a new congressional district has been drawn in Harris County?

A Yes.

Q Do you know the general ethnic background of that particular --

A Yes. I think it is predominantly black.

Q All right. And, can you tell us where that particular plan that was adopted came from?

A That particular plan that was adopted was drawn up in the Conference Committee on the last full evening of the special legislative session.

Q All right. Do you know who the members of the Conference

Committee were?

A Let's see. Senator Ward, I believe, was president. Senator Jordan, Senator Wilson, Senator Patman, and I hope I am not offending the fifth member because I cannot remember who that was. Of the House of Representatives, both Speaker Mutscher and Lieutenant Governor Barnes were present, Delwin Jones, I believe, Manton Murray served on that committee, Clyde Haynes, and that is all I can remember.

Q Do you know if it was a unanimous vote of the Conference Committee?

A I don't recall.

Q All right. Did the district, or the plan that included all of Harris County, differ substantially from the Senate bill that you had initially reported out?

A That I don't really recall. I do remember that -- I don't remember specifically. I think that there were five districts in each plan, but that is about all. I don't remember the boundaries of the districts. By the way, that information on the members who were present at the Conference Committee and whatever the vote was is available. The press was present during the whole committee meeting that night.

Q Now, in the course of your deliberation or your work in the Senate, on the Senate plan, did you have situations

where you were given plans that had been presented by members of the general public?

A Yes. We have those on file.

Q Do you know whether or not any one or more of those were combined to come up with --

A No.

Q -- any plan that you worked on?

A I don't know whether they were combined or not.

Q All right. And, do you know whether or not there was any such reliance upon any of those plans by the Legislative Redistricting Board?

A No, I do not.

Q All right. Have you seen the Senate plan that has become law?

A Yes.

Q Are you generally familiar with it?

A Only roughly familiar.

Q All right. Let's get a copy of it. We will come back to that. In the course of working with the Legislative Redistricting Board, were you sent several maps to check for numerical accuracy?

A Oh, yes. I looked at a number of plans.

Q All right. And, were more than one of those plans found not to be numerically accurate, yet were subsequently rejected?

A I really can't remember.
Q Do you know whether or not a plan that you gave somebody, or somebody gave you, checked out numerically and subsequently did not become law?
A I don't remember any specific plan at all.
Q All right. Do you remember whether or not there was more than one plan that checked out numerically?
A No, I don't recall.
Q Do you remember if any of them checked out numerically?
A (Witness shakes head).
Q Do you remember if the one that became law checked out numerically?
A It certainly did. We had to check it for population and deviation.
Q Okay. Now, as I understand it, you had been a member -- or have you been a member of Lieutenant Governor Barnes staff?
A I do not serve on his staff, no.
Q Have you ever been?
A No. I never have served on his staff.
Q Have you ever worked with his staff?
A Certainly.
Q And, in what capacity did you work with his staff?
A I have worked through the committee, which is, I guess, about three steps removed from being a direct member of

staff.

Q When you say "the committee" is that how it is known?

A The Redistricting Committee, and then through my capacity as clerk of the Redistricting Committee with the Legislative Redistricting Board.

Q Did you ever have an occasion to draw maps which would indicate, by hashing, cross-hashing, or shading or some such device, voter preferences ranging from liberal to conservative throughout the State?

A Yes.

Q Now, in response to what directive did you make those drawings?

A My own.

Q And, what did you do with them after you drew them?

A I still have them on file.

Q What prompted you to make them?

A I just wanted --

My job was to provide the members with anything they thought they could possibly use.

Q All right. Did anybody think they could use that type of information?

A Yes. I had requests from a number of members who were curious about how a particular county voted.

Q Okay. And, when we say "member" we are talking about in the committee or Redistricting Board, or both?

A Members specifically of the Senate, because this information was -- I started putting together things, maps, any sort of data that I could possibly find and we made available to them, as far as guidelines, printouts from -- I can't remember the source. But, regarding constitutional guidelines. What I did was put together anything I thought would be of any possible use whatsoever.

Q All right. Now, did you have specific requests for that particular information from members of the Legislative Redistricting Board?

A No, not that I recall.

Q Was that information supplied to them as well?

A Yes, it was available.

Q All right. Was it given directly by you to any of their staff?

A Well, yes. They asked -- When I was asked to give that information it was given.

Q All right. And, who asked you?

A I don't recall any specific request.

Q Well, did Mr. Potter ask you that?

A Not that I can recall.

Q Did Mr. Johnson ask you that?

A I can't recall whether he did or not.

Q Did anybody in the Attorney General's office ask you for

this -- Mr. McDaniels?

A I don't recall any specific request at all.

Q Mr. Jones?

A No, I just don't recall any.

Q Lieutenant Governor Barnes?

A (Witness shakes head).

Q So, as I understand it, you simply decided that that might be helpful to somebody and you drew it up?

A Uh huh.

Q And, but there were no -- not even general request for that type of thing, voting patterns?

A Let's go back.

Q All right.

A I gathered the information, when a request by a member of the Senate came in and wanted to know "Do you have anything on voting patterns, how Dallas County voted" I provided it.

Q Well, but let's move beyond the Senate Committee and get into this Redistricting Board.

A All right.

Q Now, what about information request by members of the board, members of the Attorney General's staff, members of the Lieutenant Governor's staff, regarding voting patterns?

A I do not remember any specific request for me to bring

that information to any particular person to give to them to help draw lines.

Q Did you in fact bring that information?

A Yes, I had that information and carried it around with me.

Q And, who did it go to?

A Whenever anyone was drawing a map I had it there.

Q All right. And, who were some of the people that were drawing maps that saw that information?

A Lieutenant Governor Barnes staff.

Q Does that include Mr. Spellings?

A Yes.

Q All right. To your knowledge did Mr. Spelling receive information on voting preferences or voting patterns in the course of drawing up maps?

A Yes.

Q Okay. And, that would be both Senate and House maps?

A Yes.

Q All right. And, the type of information that he received would have been by precincts or census tracts or what -- voting patterns?

A Which areas?

Q Harris County.

A In Harris County, yes, it was done by census tracts.

Q So, he had information as to voting patterns, from a band

of liberal to conservative, by census tracts?

A Uh huh.

Q And, based upon what sources did you draw your voting records -- your voting histories in Harris County?

A In Harris County?

Q Yes.

A Gubernatorial elections, Senatorial elections, and I think the Attorney General's election.

Q Any city elections?

A No.

Q No mayor elections?

MR. MC DANIEL: When you say "Senatorial" you mean national Senatorial or State?

A State Senatorial --
No, I am sorry. National Senatorial, State-wide elections.

MR. MC DANIEL: Okay.

Questions continued by Mr. Malkin:

Q What about State Senatorial?

A No.

Q All right. Did you look into any city-wide elections other than mayor -- such as school boards?

A No.

Q All right. And, this would have been back over a period of what time?

A Since 1966, I believe, or '64, one of the two.

Q Now, can you think of any reason why that type of information would be helpful to a person drawing a map?

A I have no idea what goes on in the minds of the guys who are drawing the maps.

Q Well, as I understand it, no one asked you for this information but you thought it might be helpful so you did it?

A Yes, I just estimated that someone might want to look at it.

Q But, why would they want to look at something like that?

A I suppose to check out a new district that they got, or their old districts or whatever.

Q These are people who are drawing the lines, now?

A Yes.

Q Like Mr. Spellings?

A Like any member of the Senate.

Q We are back again on the Redistricting Board?

A Well, let me say this, that we had submissions and preferences from every member of the Senate and general public and everybody.

Q But, why would you think that someone like Mr. Spellings would be interested in voting patterns?

A That information was made available to everybody.

Q I appreciate that.

A And, I had the information available to Mr. Spellings

just as I had it to anyone else.

Q But, why would you think he would be interested in --

MR. MC DANIEL: That calls for him to speculate, in the first place. And, in the second place, there has been no showing he was interested in it, and I will instruct him not to answer the question.

MR. LUNA: Besides that, the witness has already said he didn't know.

MR. MC DANIEL: That is right.

Questions continued by Mr. Malkin:

Q Your answer --

Rather, your previous answer, though, has been that Mr. Spellings did have this information available to him when he drew Senate and House districts, is that right?

A Yes, sir.

Q And, just to clarify the record, that was based upon a request by him for that information?

A No.

Q You simply dropped it off to his office?

A Whenever information came in I simply carried that with me, just everybody else -- from population figures and all that sort of thing.

Q Where were you carrying this?

A In a heavy briefcase.

Q You were walking around walking into offices and saying

"Is there anything in my bag you are interested in"?

A When I am called I take everything.

Q All right. So, you were called by Mr. Spellings?

A Yes.

Q And, he said "Bring your large br.efcases with you"?

A Yes, bring your information.

Q All right. So, you would be keeper of all information of this particular committee, is that right?

A Yes, at least to my knowledge.

Q Did you leave —

When you went to Mr. Spellings —

How many times did you go to him in the course of the Legislative Redistricting Board deliberations?

A I have no idea how many times.

Q Would it be more than ten?

A Probably, yes.

Q How do you know specifically that he looked at voter preferences?

A I don't know. I don't recall whether he did or not.

Q Did you leave your briefcases with him?

A At times, yes.

Q And, you would come back and pick them up?

A I was in and out of the office all the time.

Q Now, you did, as I understand it, take part in checking

for mathematical accuracy?

A Yes, I did.

Q All right. And, how did you tie in with Mr. Fisher; do you know Mark Fisher?

A I don't recall. Was he an employee of some member of the board? I don't really recall Mark Fisher.

Q Okay. You, however, would check for mathematical accuracy of various, say, Senate plans?

A Uh huh.

Q Okay. Were you checking for mathematical accuracy of Senate plans during the course of the Legislative Redistricting Boards responsibility?

A Yes, I was.

Q And, can you tell us approximately how many of those plans, Senate, that you checked?

A I have no idea.

Q Would it be more than one hundred?

A Probably not.

Q More than fifty?

A Probably not.

Q More than twenty?

A There I don't know.

Q From twenty to fifty?

A Anywhere in that line.

Q Okay.

A More or less. I have no idea.

Q Do you know if any of those checked mathematically?

A I do not recall.

Q You don't remember if you had to tell someone that it was right or wrong?

A Not specifically, I don't recall.

Q Who would request that you check a plan for accuracy?

A Oh, a Senator.

Q We are on the redistricting board now, we are past --

A Okay. Back to that. That is true too. As I said, members of the Senate submitted their preference plans and asked me and I had to check them.

Q They were submitting them to you directly as opposed to submitting them to the board?

A They knew that whenever a map would be drawn that I would make it available to, you know, to be submitted. As the clerk I was the intake man and then I provided it, you know, to anyone else that wanted to look at it and brought it to the attention of the other members of the board. And, so if a Senator thought he had a good plan he came -- he might come to me and he might have checked it out himself -- some did and some didn't. And, I would, you know, check out a map and see if it was okay with him -- or see if it checked out -- if it was even feasible. And, then I would go ahead and tell him,

you know, whether it checked out mathematically or not.

Q You don't recall whether you told anybody their's did or didn't?

A You just triggered my memory. I remember one in particular was, I think, Senator Putman submitted several plans, and that is the only one I can recall because I do recall he was in several times. He had his own computers set up.

Q All right. Now, if a plan were given to you would you have it reproduced and delivered to each member of the board or how did that process work?

A Most of the time, if I recall, for example, in Senator Putman's case, he brought his plan to me and I checked it out and returned it to him and then he brought it to the members of the board -- to their attention.

Q I see. And, was that the normal course of proceedings?

A I would say so.

Q Were you given plans by board members for checking?

A Yes.

Q All right. And, do you remember whether or not any of those did not check -- did not balance out numerically?

A I just don't recall.

Q Were these plans that board members had that were delivered to you, were they delivered physically? Did

they call you up to pick them up or did someone drop them off or were they mailed, or how did that work?

A Some were dropped off, some were given to me, you know, in person. Some of the plans were not complete plans. A member might say, you know, does this -- does this check out numerically, and I would just add it up on the spot.

Q Did memoranda accompany any of the plans that were sent by members of the board to you?

A Not that I remember.

Q There were none at all?

A Not that I recall.

Q Now, if such memoranda did exist would they be attached to the maps? Would there be a separate file of memos?

A I don't have any recollection.

Q Well, do you know of any?

A I certainly can't remember any memos that weren't with them.

Q Do you know of any file or one or more memoranda that were circulated among members of the board discussing various plans?

A I have no knowledge of anything like that.

Q Did you participate or did you attend any of the meetings of the Legislative Redistricting Board?

A Yes.

Q All right. Did you attend any of the public meetings?

A Yes.

Q Did you attend any of the private meetings?

A Yes.

Q And, how many public meetings did you attend?

A I can recall two. And —

Q All right.

A And then the final adoption.

Q All right.

A But, that is all.

Q How many private meetings did you attend?

A I have no recollection of a given number. I attended several.

Q Would it be between five and ten?

A Probably.

Q All right. And, were all the members of the board there?

A Sometimes, yes. Sometimes, no.

Q Okay. So, there were about five or ten private meetings with —

A That I attended.

Q That you attended. But, there could have been more that you weren't at?

A Yes.

Q Do you know if there were more than that?

A No, I don't know specifically.

Q How did you know there was a meeting? Was there a letter or something that was sent to you, "We are going to have a meeting today"?

A I just received a phone call, usually.

Q Okay. And, where would you meet?

A In anyone's offices.

Q Okay. And, that would be --
Do you specifically remember occasions when all of the members of the board were present at the private meetings that you were at?

A No. I don't recall one of which all members were present.

Q Okay. Would members of the staff also be present at that time?

A In some cases, yes.

Q The respective staffs?

A In some cases, yes.

Q Do you remember the discussions that occurred at these private meetings?

A Well, could you be more specific.

Q Well, do you remember questions of talking about voter preferences?

A No, I don't remember.

Q All right. Let me approach it a different way. Based

upon all of your attendances at the various meetings that you attended, what factors went into the Legislative Redistricting Boards decision to draw the lines in the Senate as they drew them -- what factors did they consider that you know of?

A I don't have any idea.

Q What factor --

A What?

Q What factors were discussed?

A The only factors I can remember are, you know, saying "We have got to get within a population deviation; that has got to be acceptable". And, that they knew that and were trying to, you know, just draw a good map that would be acceptable.

Q When you say "a good map" what do you mean?

A A map that would be acceptable to the public, that would not be obviously gerrymandered, that would look good, that would try to provide a good basis --

Q When you say "gerrymandered" what do you mean by that term?

A Well, I would say one that goes out of its way to accomplish certain goals.

Q Such as?

A That would be up to, you know, whoever considers a certain goal to be attained by a map.

Q I understand that. But, of course, you have now stated that the consideration, one of the considerations of the members of the board, was that a plan shouldn't be obviously gerrymandered?

A That is right.

Q Now, what I want to know is: since they were discussing the question of gerrymandering, in what context were they discussing it? Were they talking about incumbence or were they talking about race, were they talking about voter preferences -- how were they using the term?

A They were using the term in the manner of drawing a constitutional map.

Q All right. They did not want the map to look -- to be gerrymandered?

A That is right. They wanted a constitutional map.

Q Well, let's back up just a little bit. With regard to their desire for a constitutional map, did you hear that desire expressed?

A Yes.

Q "We want a constitutional map". Did you hear a discussion as to the factors that they would have to consider in order to fall within constitutionality? You have mentioned population; are there any others?

A Not that I can recall. The ones I can remember are trying to get within an acceptable deviation to the

courts.

Q And, your understanding of gerrymandering would be a term used to describe some mathematical function?

A Well, I suppose.

Q All right. Now, when you say "good map" is there any implication in that statement of compactness of districts?

A That would be speculation.

Q Well, then, you don't really know what they meant when they said they wanted a "good map"?

A The only assumption I could have is they meant a constitutional map.

Q How are you using that term "constitutional"? Would that be one that would stand up in court?

A Yes, one that would stand up in court.

Q But, you don't know what they thought would even be necessary to deal with other than numbers?

A (Witness shakes head.)

Q Was more than one map, that the committee considered constitutional, discussed by the committee?

A I have no recollection.

Q Do you know specifically if they decided the Harris County map was one they felt to be constitutional?

A I would assume so.

Q All right. You heard no discussion on the question of Harris County senatorial districts?

A Well, other than the fact that they said that they would go along with it, that they thought it was a good map and they, you know, they were going to sign their names to it.

Q Now, who drew this particular map? And, when I say "this particular map" I mean the map that was signed by three members of the committee?

A I don't recall who drew this.

Q Did you ever know? Are you saying you have forgotten?

A No, I am saying that I simply do not know who, you know, drew this map. Some parts of it look familiar and other parts of it do not. I just do not know who is the author of this particular map; if it is a combination of maps or what.

Q Okay. You don't recall, or do you, about having the occasion to check this particular map out numerically?

A Yes, I checked this map out.

Q All right. And, do you know when you did that?

MR. MCDANIEL: Are we speaking specifically of the Harris County senatorial district?

Questions continued by Mr. Meltzer:

Q Senatorial district?

A I checked it out, well, I suppose whenever, you know, it was submitted to me to check out. And, then if it did check out then it was submitted as the map.

Q But, you have absolutely no concept of when that was?
A No. I would imagine very shortly before it became finally adopted.
Q Do you know who gave it to you to check out?
A No, I don't recall.
Q Now, did you also have an occasion to check this particular map against your precinct voting preferences?
A Yes. I do remember showing it to two members of the press.
Q All right. How about the members of the board?
A I don't specifically remember showing it to -- outlining it or anything -- to members of the board.
Q How about to any of their staffs?
A I don't recall showing it to any members of the staff either.
Q So, no one was concerned with the way voters in Houston voted?
A I don't know whether they were concerned with it or not.
Q But no one was concerned enough for you to show it to them?
A I do not recall if anyone specifically asked that it be shown, that I outline it or do anything with it.
Q Do you remember ever showing it?
A The only specific recollection I have of showing it to somebody was two members of the press.

Q All right. Who were they?

A Two members of the Houston newspapers, Capitol Correspondence. I do not recall the names.

Q Was it Beau Byars?

A It was not Beau Byars.

Q Was it Wiley Post?

A I don't believe it was Wiley Post either.

Q As a basic summary, you had no policy making power whatsoever?

A Not that I was ever aware of.

Q You really were pretty much of an information gatherer and deliverer?

A Roughly.

Q And, you did some mathematical checking?

A Yes.

Q You were privy to conversations but you remember none of them specifically of the board?

A None that I can recall.

Q You don't remember when you first saw this map?

A No.

Q You do remember checking it only for mathematical accuracy?

A Right.

MR. MEADOR: That is all for now.

MR. IDAR: Could I ask him a

couple of questions?

CROSS EXAMINATION

QUESTIONS BY MR. IDAR:

Q Mr. Hoosar, my name is Ed Idar and I am representing the Mexican-American intervenors in what we call the gerester cause that was filed in Tyler.

A Yes, sir.

Q And, we are concerned primarily with the House.

A Yes, sir.

Q We are not contesting Senatorial redistricting.

A Uh huh.

Q Now, let me see. You told, on questioning by Mr. Nelkin, you testified that you provided members of the Senatorial committee, and presumably later on, members of the Legislative Redistricting Board, with population data by census tracts?

A Yes, sir.

Q Presumably for the entire State?

A Yes, sir.

Q Did you provide them with any data relating to the Mexican-American population?

A No, sir. No information of that sort is available from the census bureau.

Q Well, do you mean there is none available for the 1970 census?

A Right.

Q Are you aware it was available for the 1960 census?

A It would be assumption on my part. I am sure it was available for the 1960 census.

Q Well, didn't you think it crucial to give them at least some rough idea, even if it was ten years old or nine years old, as to where the Mexican-Americans were concentrated throughout the State?

A No, I didn't. That information on Mexican-American citizens -- there was no information of that nature at all.

Q In the 1970 census?

A For the 1970, and none was made available through me at all.

Q And, you didn't think that the 1960 census data would be of any useful function?

A I never considered it.

Q You just didn't think about it?

A (Witness shakes head).

Q Do you think it would have served a useful function?

A I wouldn't know.

Q Now, you said that the committee, the Senate committee, was held over to assist the Legislative Redistricting Board?

A My capacity was extended.

Q You mean your job as such?
A Yes, sir.
Q As clerk of the committee?
A Yes.
Q Were you assigned to work with the board?
A Not formally. To my knowledge I don't know whether there was any formal recommendation or anything made.
Q Who told you that you could go ahead and work with the board in drawing up House and Senate district plans?
A Mr. Spellings told me that I was to continue.
Q What was his relationship to the Senate committee?
A To the Senate committee? He is the Lieutenant Governor's Executive Assistant.
Q And, was the Lieutenant Governor the chairman or something of this committee of the Senate?
A He appoints all committees in the Senate.
Q Does he also have jurisdiction over the staffs?
A His jurisdictional lines I am not real familiar with. I would assume so.
Q At any rate, it was Mr. Spellings of Mr. Barnes staff that told you that you as clerk of the Senate committee would continue after the session was over and would be working with the Legislative Redistricting Board?
A Yes, sir.
Q Now, you further indicated, on questioning by Mr. Nalkin,

that you prepared a number of maps and other data regarding voting patterns?

A Yes, sir.

Q Specifically, I think he was asking you about Harris County. Did you do likewise, say, for Bexar County?

A Yes, sir.

Q And, did you also furnish this information to the members of the Legislative Redistricting Board?

A In the same manner that I previously stated.

Q Now, what was the voting pattern information that you had available and furnished to the members of the board as related to Bexar County?

A The same information.

Q Did it involve how they voted in the Governor's race?

A Yes, sir.

Q The National Senatorial election?

A Well, those state-wide elections I mentioned.

Q Nothing on State or House of Representatives?

A No, sir.

Q Did you --

Either in connection with Bexar or Dallas or Harris or any other county, did you come up with any information as to voting patterns by ethnic or racial groups?

A No, sir.

Q You didn't think it was material to look into that?

aspect of that?

A There is no way I could do it with the information that I had.

Q Okay. We have had testimony here that at one point Mr. Spelling brought a map to staff members in the legislative council for making copies, which were circulated to the members of the board, and that this map ultimately became the -- I am talking about the House -- the map that the board ultimately adopted?

A Uh huh.

Q Do you have any knowledge of that particular map?

A Yes, I have some knowledge.

Q Are you familiar with the House, the House plan, that the board did adopt?

A Yes, fairly familiar.

Q Do you know who drafted or who drew up that plan or map?

A I would have to say that the board, members of the board, drew it up. Mr. Spellings drew a map, the Attorney General's office drew maps, the Land Commissioner drew maps.

Q I realize a lot of people were drawing maps, but I am talking about the map that was ultimately --

A The specific one.

Q Who drew that particular map?

A I would think that --

I wouldn't be able to say whose map it was. I think it might have been a contribution of a number of people, but I really don't know specifically who selected a given district and a given map.

Q How much do you know about this particular map that you -- Did you participate in drafting the map?

A Yes, I did.

Q Who with?

A With Mr. Spellings.

Q Did you and him basically draw up the map?

A I don't think I could say that, no.

Q To what extent did you work with him in the drawing up of that particular map?

A Whenever he drew up a map to show to the various members of the board I assisted him in drawing those lines and in checking out to see if a given county compared with another given county and would give us a particular population difference.

Q Whether it fell within acceptable population deviations?

A Yes, sir.

Q During the various meetings of the board that you attended, I believe you testified you attended a couple of the public meetings and anywhere from five to ten of the private meetings?

A Yes.

Q You realize, of course, that one of the major issues, as far as House redistricting was concerned, was whether or not the bigger counties, the bigger cities, for example, were going to get single or multi-member districts?

A Yes.

Q I believe that as late as on or around October 10th, which was just thirteen days before the deadline the board had for drawing up a House plan, that that issue was still up in the air?

A Yes.

Q Do you recall that?

A Yes, sir.

Q Sometime between October 10th and October 23rd that issue was resolved and it was determined that only Harris County, of the major counties, would get single member districts?

A Yes.

Q Do you recall that?

A Yes.

Q Can you tell me at what stage this issue was resolved and by whom?

A I have no -- I believe -- I have no idea.

Q Did you attend either public or private meetings of the

board between October 10th and October 23rd?

A Yes, I did.

Q Several?

A Yes, sir.

Q And don't you recall any discussions there on this policy making issue as to whether to go single member or multi-member in the bigger cities?

A Yes. All the members were trying to decide which was the course to go. And, you know, I know nothing more than that.

Q All right. You recall that Mr. Barnes was -- or indicated at least publicly, at least according to what the press reported, that he was in favor of single member redistricting?

A I read that in the papers, yes, sir.

Q But, apparently he ultimately changed his mind and favored it only for Harris County but not for the others?

A He signed the bills.

Q Do you recall whether the board at any time made a decision to instruct the staff to go for single member districts in Harris but to leave the others as multi-member districts?

A I don't remember a specific time, no, sir.

Q How is it that you don't -- you remember some discussions but you -- and apparently you made some meetings of the

heard at the time that obviously this must have been in their minds?

A Uh huh.

Q And, you just don't recall how they resolved that issue?

A Because it could have been decided a number of ways. It could have been decided in personal conversations, which I would not be privy to.

Q When was the first time that you found out that they had finally decided on single member districts for Harris County and multi-member districts for the others?

A I don't recall any specific date.

Q Can you recall approximately how many days prior to the adoption of the final plan when you learned this?

A No, sir. Not any --

I couldn't give you a number.

Q All right. Now, you indicated that as best you could determine it was the desire of the board to come up with a constitutional plan?

A Yes.

Q And you were a third year law student?

A Yes.

Q Have you taken constitutional law yet?

A Yes.

Q Have you heard of the Chavez case that was decided by the Supreme Court last June?

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A Yes.

Q Are you familiar with the case law as it relates to redistricting and as it further relates to the possibility of diluting or minimizing or cancelling the voting strength of significant minority groups or political elements?

A Yes, sir.

Q Are you familiar with all this?

A Yes, sir. I am familiar with roughly what the guidelines of the Chavez case are.

Q And, during all the work that you did for this board, providing them with the information that you did, did you at any time provide them with any specific information as to where the minorities were located in the major counties?

A No. I had no --

As I said, I had no data whatsoever --

Q Did the board ever ask you to gather that sort of data?

A No, sir.

Q Did the board ever indicate, either the board or members, individual members of the board, ever indicate a desire to check that out to be sure that they were going to comply with the constitutional aspects of this issue as related to the minority groups?

A When we have information available we --

Q You at least had it for the blacks, didn't you?

A I had it for the blacks, yes, sir.

Q But, you made no specific inquiry as to how this plan was going to effect the blacks, did you?

A No, sir.

Q You gathered no data relating to how the proposed plans for the House were going to effect the blacks?

A No, sir, not that I can recall.

Q And, you were not asked to provide data by the board or any member of the board, were you?

A No, sir, not that I can recall.

Q Would it be fair to state, based on your observations and what you heard discussed by the board at the different meetings that you attended, that it was the ultimate desire of the board to go ahead and give Harris County single member districts but leave the status quo as it was in the others?

A We were informed that the board had decided to draw up a plan, which was evidently the ultimate result, with Harris County as single member districts and --

Q You say "we". Now, who are you talking about; you and who else?

A The members of the staff.

Q And, who informed you about that?

A Mr. Spellings informed me that that was the -- that was

how the map was going to be drawn.

Q Do you know if any other staff members were so informed by other people?

A No, sir, I have no idea.

Q Mr. Spellings is the one that informed you?

A Yes, sir.

Q Were you asked by the board at any time, or by a member of the board, to provide them with any information comparing the cost of campaigning in a district, we will say, roughly seventy-five thousand population in comparison with a district, say, with a million three hundred thousand population?

A No, sir.

Q That information would have been available at least for the last election, would it not?

A I don't know.

Q Doesn't the Secretary of State have expense reports as they relate to the State-wide races?

A I believe I understand that a man has to file his financial statement of expenses in an election.

Q And that information would also have been available with the local county clerks as respects some -- well, all of the counties, for that matter, were they not, for county wide races?

A That I have no idea. I think you are giving me more

credit than I am due.

Q So, actually you were not requested by the board, or a member thereof, at any time while all this was going on to provide any data that would contrast your single member districts versus your multi-member districts for your major counties in Texas, except for Maverick County, and what the outcome would be as it related to minority groups like the blacks or Mexican-Americans under the single district plan as compared to the multi-member district plan?

A No, sir. I was not asked to provide any of that information. I had, you know, informed the board that there was no data available on Latin-Americans at all.

Q Except --
Of course, you didn't advise them about the 1960 census at all?

A As I said, I never even thought about the 1960 data.

Q All right.

A And therefore there was nothing that I could inform them of the effect of multi-member versus single member districts.

Q What about the black population? You did --

A The blacks -- I did have data on the blacks.

Q Yes.

A Which we got you know, in the middle of the summer or late

is the number.

Q You got it in plenty of time for it to be considered by the board, did you not?

A Yes, sir.

Q But, you didn't --

They didn't ask you and you didn't provide them with the information as to what the effects on the black population would have been under single member in contrast to multi-member districts?

A In general, there was, you know, some information regarding the blacks. We had a total population figure for the blacks in Harris County and we had a breakdown of mainly where the blacks worked.

Q You did have census tract data that would show you how many blacks and how many whites were in the census tracts, didn't you?

A Yes.

Q And, you could have easily plotted the concentration of the black population, not just in Houston but in Dallas and Bexar and every other major county, couldn't you?

A In Dallas and in Harris. I could have done the others, but there was no concentration in those areas.

Q You mean there was no effort to determine that?

A No.

MR. IDAR: I guess that is all.

CROSS EXAMINATION

QUESTIONS BY MR. EASON:

Q Mr. Hooser, my name is Nathan Eason and I am a lawyer from San Antonio and I represent Van Henry Archer, et al --

A Yes.

Q -- in a case attacking both the Senatorial and Legislative redistricting.

A Yes, sir.

Q Mr. Archer is chairman of the Bexar County Republican Party.

A Yes, sir.

Q Now, I will try to be brief and I will try not to be repetitious, but there has been a certain line of questioning going on while I was doing other things. Now, the committee that you named awhile ago, the Conference Committee, are you speaking of the Senatorial Conference Committee?

A I listed both House and Senate members for the Conference Committee.

Q It was a joint committee?

A Yes, sir. The Conference Committee, whenever the House and Senate plans --

This applied to congressional districting only.

Q And, I believe Senator Ward was chairman of this committee?

A Yes, sir. He was chairman of the Senate Committee and Representative Delwin Jones was the chairman of the House Committee.

Q What was Senator Ward's opinion of the redistricting bills?

A I have no idea.

Q You don't know?

A I haven't talked to him about it, no, sir.

Q Where are you from originally?

A Austin.

Q And, you are attending the University of Texas Law School?

A Yes, sir.

Q And graduating in August?

A Yes, sir.

Q Now, I believe you indicated that you carried around a heavy briefcase with certain memoranda and certain parcels which contained, among other things, policy guidelines or at least -- I forget the way that it was phrased -- but in any event election returns or election strength in particular districts or precincts, is that correct?

A Yes.

Q Did it also contain ethnic, racial and political information by district or precinct?

A Well, as I mentioned before, it was just a breakdown of how a given census tract -- generality of how a given census tract voted. There was no particular, you know, look at, say, Latin-American census tract votes a certain way or anything; they were just broad basics.

Q All right, sir. And, again, I will try not to be repetitious. But, this was drawn largely not by instruction to you but on your own to furnish information for the various members of, not only this joint House and Senate committee but for the board?

A Well, no, sir. Let me make this one point; this was done for the Senate, for the entire membership of the Senate, so that they would have reference to it during the time where we thought we were going to end up redistricting the State.

Q But the same material --

A Yes, sir.

Q -- plus possibly some added to material was available to the members of the redistricting board for the House and Senate?

A Yes, sir. The only added information was that which we received late on the ethnic breakdown.

Q Would this also accrue to the benefit of the legislative

counsel, Mr. Robinson's office?

A Yes, sir. I assume it would be available to him.

Q Uh huh. And, as you say, you were simply there on call --

A Yes, sir.

Q -- to the various people that wanted this information?

A Yes, sir.

Q Do you still have this information?

A Yes, sir, I believe I do.

Q It is in your jurisdiction and control?

A It wouldn't be under my jurisdiction and control. It is in my office -- Senator Ward's office.

Q Senator Ward's office?

A Yes, sir.

Q And that is, I take it, open to the inspection of the various people here, is that correct?

A You would have to ask Senator Ward.

(Whereupon, a discussion was held off the record at this time.)

Questions continued by Mr. Hagen:

Q Then, as I understand it, it is all right with you, Mr. Hooser and all right with the Attorney General's office, presuming it is all right with Mr. Ward, for us to look and examine the contents or make copies of things from it?

A As I understand it, Senator Ward would be the person you would ask.

Q All right. Would either you or the Attorney General contact Mr. Ward to determine whether or not we can get this permission?

A Sam --

MR. MC DANIEL: Well, Senator Ward is available to you as he is to me, and I can give you his phone in Meridian and you can certainly contact him and find out whether it is. And, you have got full leeway --

I have no objection to you contacting him at all.

MR. EASON: And, you will furnish me with his telephone number?

MR. MC DANIEL: Yes, I will give you his telephone number; I have got it in my office.

Questions continued by Mr. Eason:

Q As part of your employment duties, did you give any advice concerning Senatorial or House redistricting to various members of the board?

A No, sir.

Q I believe you further stated that you were quite familiar with the Chaves case and other --

A I was generally familiar, yes, sir.

Q And, the requirements necessary to be met in order for redistricting to be constitutional?

A As I understand them.

Q Do you know actually who drew the final map and plans that were accepted by and made the action of the redistricting committee of the Redistricting Board of Texas on October 19th and October 22nd of this year for the House and Senate?

A Who actually drew them?

Q Yes, sir.

A No, sir, I don't know who drew the final product.

Q Are you familiar with the plan?

A Yes, sir, with a few months absence from it.

Q I am going to hand you a map which shows the -- purports to be the Texas Senate Districts as enacted on October 19th.

A Yes, sir.

Q Are you familiar with the lines there that purport to set out District 21?

A Yes, sir.

Q And, I believe Districts 19 and 26, which are solely within Bexar County, are completely encircled by 21, is this correct?

A Yes, sir.

Q And, if you know, Senator Bernal is the present Senator

from 27 [illegible]

Hall —

A District 26.

Q District 26 and Continue from 19?

A Yes, sir.

Q And, I believe that Wayne Connally, who has other aspiration at this time, is the past Senator from the lower district?

A Yes, sir.

Q Bearing in mind the rules that were laid out in the Chavez case and other cases having to do with the constitutional requirements of redistricting, would you consider that to be a contiguous and compact district?

A I don't know. This is speculation. I don't know whether I should answer that or not. At least in my own mind I think that is -- would be a constitutional district, yes, sir.

Q I believe the question was "contiguous and compact".

A Contiguous and compact? Yes, sir.

Q Did you furnish in your memoranda either voting records or political, ethnic, racial information to any of the members of the board or anyone else in regards to the area subscribed in District 21?

A Yes, sir. That information was available on the maps.

Q Did you supply it to anyone that you can recall?

A Not that I can recall specifically, no, sir.

Q And, you of your own knowledge could not know whether or not --

You say it was available?

A Yes.

Q But you do not know whether that was weighed as to the ethnic, political and racial circumstances?

A No. I really couldn't --

I have no idea why a given line was drawn in a given place.

Q In your research did you determine what the political records, we will say, for the northeast part of San Antonio would have been since, I believe you said, 1962 through 1964 that you went back.

A '64 or '65.

Q Anyway, in that area do you know what the voting records would have been for the northeast part of San Antonio?

A The map would probably show a given tendency.

Q Yes, sir. You don't recall at this time, though, what it shows?

A No, sir, I really don't.

Q Are you familiar with Olmos Park, Terrell Hills and Alamo Heights?

A Yes, sir, I know that part of town.

Q Do you know whether or not that is what you might term

as a Republican stronghold?

A Probably likely to be; it is a very well-to-do part of town.

Q And, you don't know of your own knowledge that they have a Republican county chairman, commissioner and Republican J.P.?

A No, sir, I sure don't.

Q I think this map shows even in more close detail Bexar County where District 23 comes in almost to the center of town and taking the southeast part?

A Yes, sir.

Q Would you say there is a community of interest between the people of northeast San Antonio and, say, the people of Duval, Jim Hogg and Starr Counties?

A I couldn't answer that question. I really -- I have never been able to determine what "community of interest" is.

Q Did your research and your memoranda include such things as community of interest?

A No. As I say, I don't know what it is.

Q I understand you personally -- But, I didn't know whether you had investigated into that or not.

A No, sir.

Q You would be attempt to go into that?

A I suppose the only way that could possibly be done is to just try to find census information that goes into income brackets, and that information to my knowledge was not even available and we certainly didn't use it.

Q But, in any event you made no investigation into that at all?

A No.

Q And, you had no information regarding that?

A No, sir.

Q And, I am not trying to qualify you as an expert, Mr. Hoosar, but in your soundest opinion do you feel that that is a reasonable, fair and equitable district?

A Well, I don't think I should give an opinion. I am not sure I am supposed to.

Q Well, this is subject to objection at the time it is introduced or offered for evidence. Do you have an opinion?

A I think I had better ask Sam first.

Q Well, we don't seem to be able to have Sam available during all of this questioning. Your approval was not sought?

A No.

Q In any of these matters?

A No, sir.

Q Do you have Senator Ward's telephone number available?

A Yes.

Q Will you furnish that to me this afternoon?

A Certainly.

MR. MASON: I believe that is all.

MR. IDAR: Does anybody else have any questions of this witness?

MR. MC GUIRE: Just one minute.

Questions continued by Mr. Mason:

Q Mr. Hunter, you don't have any plans to leave town?

A No, sir.

Q This is not in the nature of a 'who-done-it' but since there is a question concerning the availability of these records --

A Yes.

Q -- I may want to interrogate you about them after I get the documents to look at them -- if I get it.

A Certainly.

Q And, you will be available and you will be on tap?

A Yes, sir.

MR. MASON: Thank you.

THE STATE OF TEXAS)
)
COUNTY OF _____)

SUBSCRIBED and sworn to before the undersigned authority on this the _____ day of _____, A.D. 1972.

_____
Notary Public in and for _____ County, Texas.

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

I, JACK D. STEER, a Notary Public duly commissioned and qualified in and for the County of Travis, State of Texas, do hereby certify that, pursuant to agreement of counsel, there came before me on the 28th day of December, A.D. 1971, at 2:00 o'clock P.M., at the offices of the Attorney General, Supreme Court Building, Austin, Travis County, Texas, the following named person, to-wit: GREGORY KENT ROGERS, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness and that the said witness read the same and subscribed his name thereto.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notary seal on this the _____ day

of _____, A.D. 1972.

JACK D. SYKES, Notary Public
in and for Travis County, Texas

My Commission expires 1st day of June, A.D. 1973.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO.

BOB BULLOCK, *et al.*,
Appellants

v.

DIANA REGESTER, *et al.*,
Appellees

PRESTON SMITH, *et al.*,
Appellants

v.

JOHNNY MARRIOTT, *et al.*,
Appellees

PRESTON SMITH, *et al.*,
Appellants

v.

VAN HENRY ARCHER, *et al.*,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

This appeal is from decisions of the United States District Court for the Western District of Texas in three of four consolidated actions challenging the work of the Legislative Redistricting Board of Texas. These decisions hold that the districting of the State of Texas into districts for the election of its one hundred fifty member House of Representatives is constitutionally defective because (1) there are excessive population variances between the districts, and (2) multi-member districts in Dallas and Bexar (includes City of San Antonio) Counties tend to unconstitutionally dilute the votes of Negro citizens (Dallas County) and Mexi-

can-American citizens (Bexar County).[1] No appeal has been perfected from the fourth action, *Graves* v. *Barnes,* in which the lower court held the districting of Harris County (includes the City of Houston) into state senatorial districts not to be a racial gerrymander. The Archer appellees are appellents in *Archer, et al* v. *Preston Smith, et al,* No. 71-1676 filed here June 23, 1972. That appeal is from a lower court ruling that state senatorial districts in Bexar County are not politically gerrymandered against the Republicans of Bexar County. It is being handled by separate instruments.

The Republicans of Dallas and Bexar Counties have alleged that multi-member House districts in those counties unconstitutionally dilute the votes of Republicans. The lower court did not rule on this contention, believing that the relief imposed for ethnic reasons (single member districts for Dallas and Bexar Counties) would, in any event, give the Republicans all the relief to which they might be entitled.

The lower court ordered into immediate effect on January 28, 1972, single member districts for Dallas and Bexar Counties. The lower court gave the Texas

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[1]While the lower court discusses at some length the different treatment accorded Harris County in comparison with the other metropolitan counties of Texas, and strongly hints there might be some constitutional infirmity because of the difference, the court does not seem to so hold. Appellants are prepared to argue on plenary consideration of the case that difference alone does not require justification and that the lower court's reasoning is really indicative of an aversion to multi-member districts that cannot be confined to differences between metropolitan areas. Whatever can be said about the differences between multi-member districts in one metropolitan area and single member districts in another is applicable to the differences between multi-member districts and single member districts generally. Appellants would argue that absent something other than a mere difference, multi-member districts in one metropolitan area as opposed to single-member districts in another metropolitan area are *per se* constitutional.

Legislature until July 1, 1973, to try again to district the state as a whole. The legislature had previously tried in 1971 but its efforts were declared by the Texas Supreme Court to be in violation of the state constitution's prohibition against cutting county lines in the less populous counties. *Smith* v. *Craddick,* 471 S. W. 2d 375 (Tex.Sup. 1971) (178F)[1] Because of this, the Texas Constitution required the Legislative Redistricting Board of Texas to redistrict the state.[2]

It is the work of the Legislative Redistricting Board of Texas that is now *sub judice.*

OPINIONS BELOW

The opinions and orders of the court below are not yet reported. They are reproduced in the separately bound Appendix. They consist of: Per Curiam opinion (1A-62A); Order of the Court (63A-82A); Opinion by Justice, District Judge, concurring in part and dissenting in part (83A-96A); Opinion by Wood, District Judge, concurring in part and dissenting in part (97A-108A); Notation by Goldberg, Circuit Judge, concurring specially in the result of section four of the per

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[1]The separately bound appendix has consecutively numbered pages. The letter designations are to indicate separate entries. All page references are to the appendix.

[2]While the Board's action in apportioning the Texas House districts is severely criticized because only done pursuant to mandamus (21A) issued in *Mauzy* v. *Redistricting Board,* 471 S.W.2d 570 (Tex.Sup. 1971) (186F), the criticism seems wholly unfounded. The California Supreme Court, construing a state constitutional provision very similar to Article III, Section 28, Texas Constitution, had held that even invalid action by the legislature prevented the Board from acquiring jurisdiction of the apportionment. See please, *Yorty* v. *Anderson,* 60 Cal. 2d 312, 33 Cal. Rptr. 97, 384 P. 2d 417 (1963) and *Legislature* v. *Reinecke,* 6 Cal. 3d 595, 99 Cal. Rptr. 481, 492, P. 2d 385 (1972). Both the Texas and California constitutions create a Board to apportion the state if the legislature fails to apportion at the first regular session following the decennial census. See please, 190F-192F.

curiam opinion (having to do with multi-member districts in Bexar County) (109A); and Amendatory Order (110A-113A).

Application for stay of that portion of the lower court judgment immediately implementing single member districts in Dallas and Bexar Counties was presented to Mr. Circuit Justice Powell and by him denied, with opinion. —— U.S. ——, 92 S.Ct. 752 (February 7, 1972.) This opinion is reproduced in the Appendix, page 197H.

JURISDICTION

The actions below were brought to enjoin enforcement of a statute of the State of Texas enacted by the Legislative Redistricting Board of Texas pursuant to Article III, Section 28 of the Texas Constitution. Jurisdiction of the three judge district court was invoked under 28 U.S.C. §§ 1343 and 2281. The date of the judgment sought to be reviewed is January 28, 1972. Notice of Appeal was filed March 27, 1972 (114B) in the United States District Court for the Western District of Texas, Austin Division. On May 19, 1972, by order in No. A-1207, Mr. Justice Powell extended time for docketing this appeal to and including July 25, 1972. The jurisdiction of this Court to review the judgement of the district court is founded on 28 U.S.C. §§ 1253 and 2101(b). Jurisdiction is supported by *Swann* v. *Adams*, 385 U.S. 440 (1967), and *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

QUESTIONS PRESENTED

I. Whether the legislative districting plan adopted by the Legislative Redistricting Board of Texas was a permissible one within the standards hitherto set by this Court, and hence whether the action of the court below, in overturning the Board's plan, was improper.

II. Whether the multi-member district used by the Board for Bexar County, Texas, unconstitutionally dilutes or cancels the votes of the Mexican-American citizens who constitute a plurality of the citizens of Bexar County.

III. Whether the multi-member district used by the Board for Dallas County, Texas, unconstitutionally dilutes or cancels the vote of ethnic minorities.

STATUTES INVOLVED

There are two statutes involved. One is the Apportionment Of The State Of Texas Into Representative Districts. This statute is not yet published. It is printed in the appendix (118C-132C.) The other is Article III, Section 26, Texas Constitution. This constitutional provision is printed in the appendix (174E) and has recently been interpreted by the Texas Supreme Court. *Smith* v. *Craddick, supra* (178F.)

STATEMENT

Texas is larger in area than France. It has two hundred and fifty-four counties. A number of them are larger than the states of Delaware and Rhode Island. One is larger than Connecticut and Rhode Island combined. These counties range in population from 164 (Loving County) and 464 (King County) to 1,741,912 (Harris County) and 1,327,321 (Dallas County.)*

Article III, Section 2, Texas Constitution, sets the size of the Texas Senate at 31 members and the size of the Texas House of Representatives at 150 members. Article III, Section 25, Texas Constitution (173E), mandates single member senatorial districts based on

*Statements of area are confirmed by the 1972 WORLD ALMANAC and 1970-71 TEXAS ALMANAC. Population figures are from the 1970 CENSUS OF POPULATION, *PC (V1)-45, Texas Final Population Counts*, pp. 3-4.

qualified electors, as nearly as may be, and contiguous territory, and contains no injunction that county lines must be preserved (although generally they are now and always have been.)

Texas Constitution, Article III, Section 26, provides that members of the Texas House of Representatives shall be apportioned among the several *counties*[1] according to the population in each, as nearly as may be, based on the most recent United States census,

> provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

Counties are still a very important center of government in rural Texas, and Texas is still, in terms of area, largely a rural state.

The last regular session of the Texas Legislature (1971) attempted to apportion the state into House districts. On September 16, 1971, its result was declared unconstitutional. *Smith* v. *Craddick, supra* (178F.) A main reason for this ruling was unnecessary cutting of county lines in rural areas in violation of the Texas Constitution, Article III, Section 26.

While fully recognizing the supremacy of the federal law, the Texas Supreme Court said (185F), "The federal requirement of equal representation clearly

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[1]All emphasis is the writers' unless otherwise noted.

has not nullified Section 26 of Article III in its entirety." The Texas Supreme Court also said, speaking of the districting requirements of the state constitution (184F), "If these districting requirements were excused by the requirements of equal representation, the appellants [the state officials] had the burden of presenting that evidence."

The Legislative Redistricting Board of Texas [hereinafter referred to as the Board] attempted to satisfy both federal and state constitutions. The result is a reapportionment of the state that makes only one division of a small county in contravention of Article III, Section 26 of the state constitution, and otherwise fully complies with the state constitution, yet keeps all districts within a maximum variation ranging from a low of 4.1% under the optimum to a high of 5.8% over the optimum (153C-155C.) The optimum computed by dividing the population of the state (11,196,730) by the number of House districts (150) is 74,645. The least populous district has a population of 71,597. The most populous district has 78,943. The least percentage of the population of the state that can in theory elect a majority of the Texas House of Representatives is 49.89% (based on the total population of the 76 lowest population districts.) The average deviation, plus or minus, of all districts is 1,356 or 1.82%.*

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*The lower court has expressed some doubt about the way used by the state to compute the deviation in multi-member districts (fn. 5, 13A). For example, Dallas County with 1,327,321 people was given eighteen representatives. Eighteen times the state optimum totals 1,343,610. 1,343,610 minus 1,327,321 equals 16,289. 16,289 divided by the optimum (74,645) equals .21+, thus it is said that there may exist in Dallas County a 21+ % deviation. The state divided the total population of Dallas County by eighteen and arrived at an average figure that is 1.2% under the optimum. (Dallas County grew in population 39.5% from 1960 to 1970, 1970 CENSUS *op. cit. supra* 3). The state's computation method seems in

The record in this case is conclusive that the Board used the lowest population plan available to them that sought to comply with the state constitutional requirement of keeping county lines intact in rural areas. Only one departure was made from the state requirement. It was made in northeast Texas. Bowie County (includes Texarkana, Texas) is bordered on two sides by the states of Oklahoma and Arkansas. Bowie County has a 1970 population of 67,813,' not enough for its own representative (9.15% under the optimum.) The lowest population in any of the three Texas counties adjacent to Bowie County is 12,310 in Morris County. The total of these two counties is 80,123 (7.34% over the optimum.) Morris County borders Bowie County only diagonally, and a district composed of these two counties would have adversely affected the overall flexibility of arrangement of other counties in the area. Therefore, Red River County (population 14,298) was divided. It borders Bowie County on the west and Oklahoma on the north. Following trial, some of the Republican appellees presented a plan for the state cutting one county line in northeast Texas and alleged to have an overall deviation of 9% as opposed to the Board's plan of 9.9%. This plan was not available to the Board. Appellants do not know whether or not it has been computer checked for accuracy.

No evidence was tendered to show how the representation of any individual or group might have been ad-

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keeping with this Court's thinking in *Whitcomb* v. *Chavis*, 403 U.S. 124, 144 (1972), ". . . that Fortson, Burns and Kilgarlin proceeded on the assumption that the dilution of voting power suffered by a voter who is placed in a district 10 times the population of another is cured by allocating 10 legislators to the larger district instead of the one assigned to the smaller district." The state's method has been approved, *Kelly* v. *Bumpers*, (E.D. Ark., Civil No. LR-71-C-159, March 21, 1972).

'1970 CENSUS, *op. cit. supra* 3.

versely affected by the trivial population variances that exist between the districts created by the Board plan.

All the testimony at trial concerned the alleged effects of multi-member districting in Bexar and Dallas Counties and the allegations of racial and political gerrymander in the senatorial districting of Harris and Bexar Counties. The circumstances regarding multi-member districting in Dallas and Bexar Counties are discussed *infra* with the presentation of questions two and three.

The lower court has simply failed to "find the facts specially and state separately its conclusions of law thereon." FED. R. CIV. P. 52. It relies on broad conclusions. The members of the court below could agree on little except results, and not altogether on them. As Judge Wood put it (105A):

> I can think of nothing which illustrates better the agonizing chaos which exists in the area of restructuring the political districts of the sovereign States than this decision, wherein it is painfully obvious that the three Judges composing this very Court have almost no unanimity in finding a path from the impenetrable thicket in which the Federal Courts now find themselves.

THE QUESTIONS ARE SUBSTANTIAL

I

Population variations of the size present in this case between legislative districts, resultant from an evenhanded application of a provision of the Texas Constitution designed to preserve the integrity of small counties, do not indicate unfair representation nor deny the "equal protection of the laws."

Already this year, this Court has stated that the absolute mathematical equality rule of *Kirkpatrick* v.

Preisler, 394 U.S. 526 (1969), and *Wells* v. *Rockefeller,* 394 U.S. 542 (1969), does not squarely control legislative districting and that if you "are to consider the applicability of *Preisler* and *Wells* to state legislative districts, it would be preferable to have before us a final judgment with respect to the entire State." *Connor* v. *Williams,* —— U.S. ——, 92 S.Ct. 656, 658 (1972).

Kilgarlin v. *Hill,* 386 U.S. 120, 123 (1967), while striking down a total variance of 26.48%, three times the variance now before the Court, stated, "But we need not reach that constitutional question [the extent of variance justifiable to conform to the state constitution], for we are not convinced that the announced policy of the State of Texas necessitated the range of deviations between legislative districts which is evident here."

Both the above questions are squarely presented by this appeal. Appellants contend (1) that a rule of precise mathematical equality is not applicable to legislative districting and that the legislative plan here presented is within tolerable limits and (2) that the good faith effort to comply with the state constitutional mandate for county integrity here presented would be adequate justification for the size deviations here present from absolute equality even if a rule of precise mathematical equality were applicable to legislative districting.

The lower court has held (2-1) the state constitution to be *no* rational justification for any deviation from precise mathematical equality. This holding is without precedent and contrary to earlier case law where another three judge court said concerning the same provision of the Texas Constitution:

> The Court finds that Section 26 embodies the State policy to maintain the integrity of counties

and county lines, and that such is a rational policy, . . ." *Kilgarlin* v. *Martin,* 252 F.Supp. 404, 427-428 (1966), rev'd in part, *sub nom., Kilgarin* v. *Hill,* 386 U.S. 120 (1967).

The wishful optimism of the earlier cases, that the lower courts could work out some meaningful standards by which to judge districting plans, has not been justified. The only precise standard yet used, population equality, past a point, becomes hollow; nevertheless, the earlier cases could be handled by a pure population standard. After all, it does not take much reasoning to convincingly demonstrate that disparities of 19 to 1 and 8 to 1 between districts are unfair [*Baker* v. *Carr,* 369 U.S. 186, 245 (1962) (Douglas J., concurring)] nor that disparities of up to 102.2 to 1 are wrongful. See please, DIXON, DEMOCRATIC REPRESENTATION 266 (1968), Chart 8, *Statistical Measures of "Malapportionment" in the Fifteen State Legislatures Held Unconstitutional By The United States Supreme Court June 15 and June 22, 1964.* While of the earlier cases, the Colorado case, *Lucas* v. *Colorado General Assembly,* 377 U.S. 713 (1964) does not appear egregious, even it had a ratio of 1.7 to 1.

Then came *Kilgarlin* v. *Hill,* 386 U.S. 120 (1967) striking down a variance of from 11.64% under-represented to 14.84% over-represented. This case has received criticism. DIXON, *op. cit., supra,* 447-451. Indeed, in Professor Dixon's words, p. 449, "The Court has characterized the reapportionment issue as being a matter only of equalizing gross population clusters, rather than as being one of achieving fair and effective political representation." Even so, *Kilgarlin* shared one common attribute with earlier cases. The apportionment in *Kilgarlin* was not as equal as it might have been, and yet preserving of county integrity. In that context *Kilgarlin* and the earlier cases differ from the

present one. Here and now the Court is presented with a best effort. Given that fact, does the plan adopted for the legislative districts of Texas provide fair representation? There is no evidence to show that it does not.

This case does not concern the franchise to vote, *e.g.*, *Gomillion* v. *Lightfoot,* 364 U.S. 339 (1960), or the weighing of one person's vote for more than another's in a given political contest, *e.g.*, *Gray* v. *Sanders,* 372 U.S. 368 (1963). The question now presented concerns fair representation of persons, and of persons organized into various natures of groups. "One person, one vote," when referring to equality between the votes for a particular candidate in a particular race is unquestionably sound. To say that a vote by A in an election for X must precisely equal the vote of B in an election for Y is less clear. In *Whitcomb* v. *Chavis,* 403 U.S. 124, 145-146, this Court rejected as too remote the statistical probabilities of Professor Banzhaf concerning the effect of multi-member voting in a given situation. While appellants do not claim to be statisticians, the probability of a minority of the voters of Texas under the Board plan electing a House majority on any particular issue would seem even more remote. It would mean that all members from the 75 smallest constituencies would have to vote one way and the members from the 74 larger constituencies would have to vote another way. (This example allows for the speaker who normally would not vote.) Where the population variations between districts are politically random, because created by the jigsaw puzzle-like creation of districts from whole counties to achieve the smallest population variations thereby possible, the probability of such an alignment occurring seems absolutely to lack meaning. Even such an improbable alignment would still be meaningless in terms of minority rule unless the margin of election of each of the representatives in

each of the districts was decided by a margin of approximately one vote. To suppose that a vote in any given district is of the same importance politically as a vote in any other district is to sacrifice political fact to mathematical theory. The vote of a member of a political minority in a "safe" district is not equal in effect to the vote of an independent in a "swing" district.

Appellants would contend in this case that once low levels of population variance are achieved, as in this case, other considerations become of great importance. It is because of supposed insulation from politics and compromise—a supposition often demonstrably in error—that court redistricting and court insistance on mathematical precision is bad. Every man interested in politics has his own idea of how a districting plan should be formulated. It is doubtful that absolute population equality is at the top of most lists of considerations. What seems evident from the flood of cases following the 1970 census [fifty-one are known to this writer] is that politically motivated plaintiffs are seeking to use the courts not so much to insure equality of districts as to bring about changes in districts for their own political purposes. In many instances plaintiffs have succeeded completely because courts have simply thrown out the attacked plan and chosen a plan formulated by the attacking plaintiffs [as in imposing single-member districts in Dallas and Bexar Counties, discussed *infra.*] In other instances plaintiffs have achieved a degree of success by having the districting body compelled to redistrict, a procedure plaintiffs can then use to try once again to accomplish their own political purposes.

Appellants would contend that while equality of population and political considerations are not necessarily antagonistic in theory or final result, near absolute

equality of population is greatly antagonistic to political processes. Any plan drawn for submission to a districting authority will have political effect. Those members of the authority having familiarity with given areas will have greater knowledge of political impact in those given areas and adjustments will in all probability need to be made to insure fair representation of the people. Yet if there is no play in the joints of government such adjustments cannot be made. Even relatively minor adjustments between districts proposed cannot be made because of a ripple effect over the whole state. It requires minimal imagination to picture the fate of the poor legislator who proposes an amendment to make even a minor adjustment to afford better representation to people in his own area. If he is so bold, he will almost surely be voted down on the arguments that the plan can't be changed, the mathematics are right, and the whole plan simply can't be jeopardized; and that he can't be allowed to make adjustments because others would then want also to make adjustments. The process of compromise—the life blood of practical politics—is most applicable to political choices, but some small palpitations in numbers are necessarily reflected by its workings in legislative districting. Mathematics are important, but Godlike mathematics cut the heart out of democratic government. A standard of precise mathematical exactitude has a wholly undesirable and unavoidable tendency to unwanted (by the courts as well as the public) judicial autocracy, and stifles legislative process.

Appellants would contend that it is wholly unsound to say that there is no point short of absolute equality of population where considerations of substantial population equality achieve parity with the partisan gerrymander, community of interest, political subdivision lines, and the other things that should be considered in

an effort to achieve fair representation. If this Court approves the rule of mathematical precision applied by the lower court it will be abandoning the good it has done and will be repudiating the wisdom of *Reynolds* v. *Sims,* 377 U.S. 533, 578 (1964) in not setting precise constitutional tests, as opposed to viewing each case on its own merit.

Appellants would contend that a rule of precise mathematical equality, as applied by the lower court, amounts to a presumption of invalidity and furnishes the presumption as a substitute for evidence where neither side can by any objective proof establish the effect, or lack of effect, on legislative action, of a particular small population variance. Therefore a rule of precise mathematical equality in legislative districting not only, we would argue, misplaces the burden of proof in instances of trivial population variance, it furnishes by irrefutable presumption, its own proof that any districting plan judged by a rule of precise mathematical equality is invalid. An examination of the current cases establishes that a rule of precise mathematical equality would be bad, and that in those cases announcing such a rule and yet upholding small deviations, often no proof of justification is apparent but rather it is obvious the court considered the variations too trifling to merit judicial relief. In fact, the results of the lower courts are somewhat random. They run from a decision requiring reapportionment where the total spread of deviation, lowest to highest, was 1.4% [*Wiedman* v. *Kentucky,* E.D. Ky., Civil No. 1637, April 13, 1972—*a congressional case*] to one upholding a 19.41% deviation [*Summers* v. *Cenarrusa,* D. Idaho, Civil No. 1-71-53, January 5, 1972, pending in this Court, No. 71-1190, 40 L.W. 3493—a legislative case.] There are at least three cases other than *Summers* v. *Cenarrusa* approving population deviations between

legislative districts greater than 10% (*Wold* v. *Anderson,* D. Mont., Civil No. 939, November 22, 1971; *Stewart* v. *O'Callaghan,* D. Nev., Civil No. R-2549, May 18, 1972; *Stevenson* v. *West,* D. S.C., Civil No. 72-45, April 7, 1972) and one approving a 9.5% deviation. *Kelly* v. *Bumpers,* (E.D. Ark., Civil No. LR-71-C-159, March 21, 1972). Courts have adopted plans of 5.1% total variation (*Anderson* v. *Docking,* D. Kan., Civil No. W-3220, April 20, 1972) and 7.2% total variation (*Mahan* v. *Howell,* E.D. Va., 330 F.Supp. 1138, Stay denied, 404 U.S. 1201, Jurisdiction noted, —— U.S. ——, 92 S.Ct. 1490.) Courts have struck down plans with 7.83% total deviation (*Cummings* v. *Meskill,* D. Conn., Civil No. 14,736, March 30, 1972, Stay granted, *sub nom., Gaffney* v. *Cummings,* No. 71-1476, 40 L.W. 3587) and with 4.25% total deviation (*Millican* v. *Georgia,* N.D. Ga., Civil No. 16,401, April 19, 1972, Stay granted, *sub nom., Fortson* v. *Millican,*—— U.S. ——, 92 S.Ct. 1601, Motion to Vacate denied, —— U.S. ——, 92 S.Ct. 1763.)

Perhaps the worst result of adoption of a rule of too close mathematical precision would be that the proper districting authorities would not even try, *e.g., Prince* v. *Kramer* (W.D. Wash., Civil No. 9668, April 21, 1972.)

Nowhere has experience better shown small population variances to be meaningless than in the history of Missouri congressional apportionment. In 1969 this Court struck down a variation of 25,802 people between the highest and lowest congressional district and required the Missouri Legislature to reapportion on the 1960 figures. It did, and its new 1969 plan was approved by the lower court as complying with *Kirkpatrick.* When the 1970 census figures were in, it was found that districts approaching equality under the

1960 census varied as much as 228,314 persons, and that the difference between only two of Missouri's ten districts was less than that invalidated by *Kirkpatrick*. Appendix To Jurisdictional Statement at 3, *Danforth* v *Preisler*, (No. 71-1396, aff'd, 40 L.W. 3582, June 13, 1972.) Figures such as these absolutely explode the notion that small population variances are of any real meaning. In the present case the lower court has criticized deviation in Harris County. All the deviations in Harris County cited by the lower court are under the optimum count. Harris County grew 40.1% in population from 1960 to 1970. 1970 CENSUS, *op cit. supra* 4.

Another revealing example of the rough nature of raw census figures is provided by a comparison of two diagonally touching single member districts in Harris County, Texas, districts 90 and 93. The total population of district 90 (74,377) is .4% under the optimum for a Texas Legislative district (74,645) and 2.2% greater than the total population of district 93 (72,761) (which is 2.5% under the optimum). The number of persons of voting age in district 90 is 55,681; the number of persons of voting age in district 93 is 39,767. In percentages, district 90 has 2.2% more people than district 93 but has 40.2% more people of voting age. *Report No. 01140687, Office of Information Services of the Office of the Governor of Texas (extract of population data from the First Count Tapes of the 1970 Census by population of persons eighteen years and over)*. The variations in numbers of persons of voting age in legislative districts varies rather widely throughout the state even though the districts are of substantially equal overall population.

Appellants would argue that trivial variations 5 or 10 percent either way from the optimum, or even a little higher, should be set aside only when it can be shown

such variations result in meaningful effect on the processes of government. Such a rule would hurt no one and would enable the districting authorities to act with confidence and would be a long stride for the courts away from the "political thicket." Furthermore, such a rule on burden of proof would be consistent with that adopted in other areas of apportionment litigation. *See, Whitcomb* v. *Chavis,* 403 U.S. 124 (1971).

II

> Multi-member districting for Bexar County, Texas, does not dilute or cancel the votes of Mexican-American citizens where there are no findings of fact to support a contrary conclusion and where the Mexican-American citizens *are not a minority.*

The three members of the lower court could agree on no findings of fact concerning Bexar County. Judge Justice apparently wrote the pertinent part of the lower court opinion (42A-56A.) Circuit Judge Goldberg concurred in the result (109A.) Judge Wood concurred in the result and stated, speaking of the duty of federal courts to intrude into state affairs (107A-109A),

> *Whitcomb* v. *Chavis,* and its progeny, dictate that Federal Courts must do so where the preponderance of the evidence discloses that the State action "operates to dilute or cancel the voting strength of racial or political elements." In this connection, I personally feel that the evidence does in fact preponderate in this direction and that based on this test, I concur with my colleagues that the Board's Reapportionment Plans for multi-member districts in Bexar and Dallas Counties are unconstitutional for the various reasons stated in the majority opinion.

Nowhere are any facts found except that many Mexican-Americans suffer poverty, they constitute an indentifiable ethnic group, and they have not been as ac-

tive in political affairs as they could have been. There is no finding that they have in any way been denied participation in the democratic processes of Bexar County. Indeed, the record is strongly to the contrary. The lower court recognizes that Mexican-American citizens constitute about half the population of Bexar County (49A) and that they are a plurality in Bexar County (54A) but register and vote at very low rates, approximately 30% (54A.) The lower court states (55A),

> The fact that the State action at issue here, the apportionment of Bexar County, did not "cause" the lower voter participation is questionable argument and an irrelevant one.

It was stipulated that as recently as 1965 the then seven member multi-member district delegation from Bexar County to the Texas House of Representatives consisted of three Mexican-Americans, three Anglo-Americans and one Chinese-American. The present City Council of the City of San Antonio, elected at large, is shown by the record to be composed of nine members, three of whom are Mexican-Americans, one of whom is a Negro, and five of whom are Anglo-Americans (one of whom is a woman).

The federal courts should not embrace a rule that a disadvantaged group, regardless of numbers and access to the political processes, is entitled to favored treatment in legislative districting. Favored treatment is not "equal protection of the laws."

III

> No unconstitutional dilution or cancellation of the voting power of an ethnic group is shown to result from the use of multi-member districting where there is no evidence the group has been denied effective participation in the political processes and

the lower court finds no facts to support its conclusions and speculations that such dilution or cancellation has occurred.

It has been suggested that the Court is establishing different apportionment rules for the North and the South. *The Supreme Court, 1970 Term,* 85 HARV.L.REV. at 146 (1971.) This suggestion has been disavowed in the lower courts by a holding that the rule is the same unless racial motivation is shown by the evidence, *Twiggs* v. *West* (D. S.C., Civil Nos. 71-1106, April 7, 1972.) Nevertheless, the feeling voiced by the suggestion may explain the approach used by the lower court in the present case. That approach seems to be that because Texas has suffered racial segregation and discrimination in the past, "it is not unlikely that Texas' use of multi-member districts, taken in the entirety of Texas electoral laws and of Texas history, unconstitutionally infringes the voting rights of racial and political minorities in all Texas cities that are districted as multi-member" (39A). Not only has Texas' historical use of multi-member districts from at least as far back as 1848 been fully chronicled, *Kilgarlin* v. *Martin,* 252 F.Supp. 404, rev'd in part, *sub nom., Kilgarlin* v. *Hill,* 386 U.S. 120 (1967), the conclusions of the lower court are based on no facts and its conclusions of racial discrimination seem to stretch even the view of one whose business it is to know of such things.*

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*Testimony of Mr. Joseph Rauh, Legislative Counsel to the NAACP, urging unsuccessfully the broadening of the Voting Rights Act of 1965 to permit inclusion of certain counties in Texas. *Hearings on H.R. 6400 Before Subcommittee No. 5 of the House Comm. on the Judiciary,* 89th Cong. 1st Sess., at 694:

Mr. Rauh:

". . .

"But what we are saying is that there are four other States where there is pretty well-known discrimination

Appellants would argue that the record in this case is conclusively against the appellees, and against the holding of the lower court, on each of the objective standards for determining dilution or cancellation of voting power recognized in *Whitcomb* v. *Chavis,* 403 U.S. 124, 149-150 (1971) and also conclusive against any other possible objective finding that might tend to indicate dilution or cancellation of the ethnic vote. It was stipulated that the rights to register and vote have not been infringed. About all that can be said certainly about the record in this case is that it shows some people like multi-member districts and some do not. That this like or dislike tends to depend on whether or not a particular person is a member of a dominant political alignment is conceded. Negroes have not heretofore been elected from Dallas County in proportion to their numbers (two have been elected of four who have offered for office on the Democratic ticket, none have been elected as Republicans, though some have offered). Numbers alone would indicate that about 3 of the presently apportioned 18 representatives for the county should be Negroes. Nevertheless, the lack of Negro representatives has not been shown to be due to any dilution or cancellation of the vote or to any denial of access to the political process. In fact, the record establishes that Negroes in Dallas County, as elsewhere ir Texas, are politically active and politically effective.

The reasons for use of multi-member districts in Texas are as surely political as they are in most other

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against Negroes. It runs downhill from Florida and Arkansas to Tennessee and Texas.

". . .

"We are not claiming that those figures are adequate now to trigger action of this kind, but it will not cost $87 million to find out which counties in Tennessee, Texas, Virginia, and Arkansas are covered by the 25 percent figure . . ."

states. In an interesting but inconclusive study of the comparative effects on representation by multi and single member districts, JEWELL, METROPOLITAN REPRESENTATION: STATE LEGISLATIVE DISTRICTING IN URBAN COUNTIES: at 19 (1969), appears an analysis of why Harris County, Texas, was changed from a county wide multi-member district. The Democratic Party is split into two strong factions each of which was running slates of candidates. Neither faction wanted to gamble on a winner take all race for all the seats in the county. On the other hand, Dallas County, with a much stronger Republican minority than Harris County, has remained multi-member. In Dallas County the majority Democratic party has wanted to gamble on winner take all races. They lost in 1962 when the Republicans won every legislative seat for which they offered a candidate (6 out of 9 seats). The record in this case compels the conclusion that political and not racial motives have been responsible for use of multi-member districts in Dallas County.

SUMMARY

The lower court approach to the substantial and complex constitutional questions presented by this case seems best expressed by Judge Wood (99A),

> Under the present concept, the primary test of constitutionality in these cases is not the question of reasonableness, *vel non,* but rather turns on the question of whether the evidence merely preponderates against the fairness of the plan.

This approach necessarily makes the constitutionality of the challenged plan turn on the political philosophy of the court conducting the review. It does not meet the standards set by this Court, *e.g. Whitcomb* v. *Chavis, supra,* and it does not accord with keeping the judiciary confined to its proper scope of review.

Appellants contend that the plan for the legislative districting of the State of Texas falls within a permissible range of variation allowable in legislative districting, and contend further, that even should a test of mathematical precision be applicable, the state constitutional mandate to preserve county integrity is adequate justification for the small variations here presented.

CONCLUSION

For the foregoing reasons, it is requested that the Court note probable jurisdiction of this case and set it for argument and plenary consideration.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CIVIL ACTION NO. A-71-CA-142
CURTIS GRAVES, ET AL.
vs.
BEN BARNES, ET AL.

CIVIL ACTION NO. A-71-CA-143
DIANA REGESTER, ET AL.
vs.
BOB BULLOCK, ET AL.

CIVIL ACTION NO. A-71-CA-144
JOHNNY MARIOTT, ET AL.
vs.
PRESTON SMITH, ET AL.

CIVIL ACTION NO. A-71-CA-145
VAN HENRY ARCHER, JR.,
vs.
PRESTON SMITH, ET AL.

[Filed, January 28, 1972]

Before GOLDBERG, Circuit Judge, and JUSTICE and WOOD, District Judges.

PER CURIAM:

We are once again in the Texas sector of the political thicket of legislative redistricting and required to contour the condition of the individual trees as well as the physiography of the forest as we explore for "crazy quilts," "groves," contiguity, compactness, specie, motivation in planting, and other possible

impedimenta to constitutionality in redistricting. In ten years of wandering about this political thicket, we have not yet found the burning bush of final explanation.[1] While political processes do not easily lend themselves to judicial explorations, the Supreme Court has directed that the federal courts must play their constitutional roles in assuring the equal protection of the laws with regard to the effectiveness of the individual vote. We do not ever lightly assume the burden of the necessity of meddling with the affairs of another branch of government or with state governments, but the organics of our governmental system have not created the federal courts as political eunuchs. We realize that there is no perfect electoral process, for democracy is at best a search for "proximate solutions" to insoluble problems.[2] But although we essay our task with knowledge of the relative obscurity and difficulty of some inquiries that must be made in a redistricting case, we must nonetheless conduct vigorously our judicial search for the "proximate solutions" to the equal protection of the right to vote in conformance with the constitutional imperatives that have evolved. It is the conclusion of this Court that the Texas redistricting plan for the House of Representatives is not sufficiently proximate to the constitutional imperatives, and we find that plan to be an unconstitutional denial of the equal protection of the laws to all citizens of Texas. There are degrees of trespass, however, and with two exceptions in the proposed House of Representatives that are substantively more compelling than the rest of the Texas proposal, the counties of Dallas and Bexar, we conclude that the state legislature should be given an-

[1] See Exodus 3:2 et seq.

[2] R. Niebuhr, THE CHILDREN OF LIGHT AND THE CHILDREN OF DARKNESS (1944).

other opportunity to purge itself constitutionally before this Court feels it incumbent to act judicially to correct the inequities. *See Wells v. Rockefeller*, 1969, 394 U.S. 542, 89 S.Ct. 1234, 22 L.Ed. 2d 535. In the cases of Dallas and Bexar Counties the quality and the extent of the constitutional trespass is so egregious that it requires immediate relief.

STATUS OF THE CASES

This consolidated action results from four separate cases filed in four district courts. *See* F.R.Civ.P. 42(a). As background to the decision, we believe that it would be helpful to sketch the progress of the cases to their present status.

On October 22, 1971, Curtis Graves, a black State Representative from Harris County, filed suit in the Houston Division of the Southern District of Texas, challenging the constitutionality of the present apportionment of Senatorial districts in Harris County because of alleged racial gerrymandering. Although an injunction against effectuation of the present Senatorial plan was sought by plaintiff, the convening of a three-judge court was not requested. This action was assigned to the court of the Honorable Carl O. Bue, Jr., United States District Judge, Southern District of Texas.

On November 2, 1971, Diana Regester and several other residents and qualified voters of the Tyler Division, Eastern District of Texas, challenged the Legislative Redistricting Board's plan for the House of Representatives on the grounds, *inter alia*, that unconstitutional disparities existed in the population of many House districts and that multi-member districts in Texas result in invidious discrimination against certain racial and political elements. Named as de-

fendants in the suit were the Secretary of State of the State of Texas, the Chairman of the Democratic State Executive Committee, the Chairman of the Republican State Executive Committee, the Chairman of the Democratic Executive Committee of Smith County, and the Chairman of the Republican Executive Committee of Smith County, all of whom are charged by Texas law with the performance of certain duties pertaining to Texas primary and general elections. The plaintiffs, bringing their suit in their individual capacities and in behalf of all qualified voters in Texas, were authorized to maintain their action as a class action by order of the court.

Members of several classes were permitted to intervene, both individually and in their respective capacities, and to maintain their actions as class actions. The classes included: (1) black citizens and voters of Dallas County, (2) Mexican-American citizens and voters of Bexar and Dallas Counties (as well as other counties), (3) Republican citizens and voters of Dallas County, (4) poor and middle class citizens of Dallas County desiring to vote for and run for the office of State Representative, (5) white, black, and Mexican-American citizens and voters who are members of the AFL-CIO, an unincorporated association composed of working men and women throughout Texas, and (6) certain black office-holders in Dallas County. This Court is now of the opinion that those conditional orders previously entered which granted class action status to the Tyler plaintiffs and to the six groups of intervenors enumerated above should be amended, F.R.Civ.P. 23(c) (1). The motions to intervene are granted only with respect to the individual and official capacities of the intervenors. The motions to sue or to intervene as classes are hereby denied in the inter-

ests of the sound judicial administration of these cases, and the pleadings are hereby amended to eliminate references to class representation, F.R.Civ.P. 23(d)(4). *See Whitcomb v. Chavis*, 1971, 403 U.S. 124, —, 91 S.C. —, 29 L.Ed. 2d 363, 367 n. 1.

The Tyler plaintiffs sought only declaratory relief. In his answer the Secretary of State requested a three-judge court pursuant to 28 U.S.C.A. § 2281, alleging that the inevitable result of any declaratory judgment against the defendants would be an injunction to effectuate the judgment and that injunctive and declaratory relief had essentially the same effect in a redistricting case. We do not feel it necessary to resolve the three-judge issue with regard to the Tyler case, for the panel is unanimous on all issues raised coterminously in the Tyler case and in the consolidated cases from the Northern and Western districts.

On November 2, 1971, subsequent to the filing of the Tyler action, suit was brought in the Dallas Division of the Northern District of Texas. The Dallas plaintiffs allege that the apportionment plan for the Texas House of Representatives is unconstitutional in that multi-member districts discriminate against certain racial, religious, student, and political groups. Injunctive relief against the challenged plan of apportionment and the convening of a three-judge court pursuant to 28 U.S.C.A. § 2281 were sought by the plaintiffs. The action was assigned to the Honorable Robert M. Hill, United States District Judge, Northern District of Texas.

On November 24, 1971, the Chairman of the Republican Executive Committee of Bexar County and other Bexar County Republicans filed suit in the San An-

tonio Division of the Western District of Texas, attacking the multi-member apportionments of certain districts of the Texas House on the same general grounds stated in the actions filed in the Eastern and Northern Districts, and alleging that Senatorial districts in Bexar County were politically and racially gerrymandered. Injunctive relief and the convening of a three-judge court were requested by the plaintiffs. The Honorable Adrian A. Spears, Chief Judge of the Western District of Texas, to whom the action was assigned, subsequently made application to the Honorable John R. Brown, Chief Judge of the Court of Appeals for the Fifth Circuit, for the convening of a three-judge court in connection with this case.

PRE-TRIAL PROCEEDINGS

At the direction of Judge Brown, the Honorable Joe E. Estes, Chief Judge of the Northern District of Texas, presided at an informal joint pre-trial conference held at Dallas on December 10, 1971, relating to the foregoing four actions. At the conclusion of the conference, an order was executed by all five of the judges, which found that, in each case, the just, speedy, and inexpensive disposition of the litigation required consolidation and the convening of a three-judge court. Judges Spears, Bue, and Hill each consented to the naming of another judge in his stead to become a member of any three judge court which Judge Brown might convene. Judge Brown approved the order on the day of its entry.

On December 13, 1971, Judge Brown entered an order which constituted a three-judge court in each of the four cases. The order also consolidated the cases for hearing and submission and transferred them to the Austin Division of the Western District of Texas,

see F.R.Civ.P. 42(a). The order also provided the following:

> "The Courts as constituted each have plenary power over all questions including, without limitation, the extent to which any one or more or all of the issues in each of the cases is for determination by a three-judge court or a single judge, and the nature, kind or character of relief to be granted or the form or content of any decrees and orders (whether separately or consolidated)."

We conclude that a three-judge court is required under 28 U.S.C.A. §2281 in the Houston Case, and we deny plaintiff Graves' post-trial motion to sever. The Houston plaintiff asserts that his suit challenges only the redistricting of the Houston Senate districts, not those of the entire state, and that the case is therefore a single-judge matter. We cannot agree, for we conclude that the plaintiff is challenging a state statute of general application throughout the state and is then seeking to *remedy* by injunction one county's apportionment scheme. *See Whitcomb v. Chavis, supra. Compare* the companion cases of *Moody v. Flowers*, and *Board of Supervisors of Suffolk County, New York v. Bianchi*, 1967, 387 U.S. 97, 87 S.Ct. 1544, 18 L.Ed.2d 643, where a three-judge court was held improperly convened when the plaintiffs challenged only the *local* districting schemes for county boards of single counties in Alabama and New York. *See also Ince v. Rockefeller*, S.D. N.Y. 1968, 290 F.Supp. 878. Unlike *Moody* and *Ince*, the apportionment challenged in the Houston case is embodied in the Texas redistricting scheme for the entire state Senate, not an apportionment "of limited application, concerning only a particular county." *Moody v. Flowers*, 387 U.S. at 104. Under these circumstances, it is the nature of the statute challenged that requires a three-judge court, however plaintiffs

may attempt to limit the remedy they seek. In addition, it is not clear that the remedy can be limited.[3] The Texas Senatorial districts that are challenged primarily with regard to Harris County are not entirely within Harris County; thus, there could be a domino effect that could reach well beyond the relief given to a single county.[4]

At a joint pre-trial conference held at Austin, Texas, on December 22, 1971, the managing judge of the three-judge court entered an order providing for expedited discovery procedures in view of the filing deadline of February 7, 1972, for candidates for office in Texas. It was also ordered that the chairman of the Republican State Executive Committee and the chairman of the Republican Executive Committee of Smith County be realigned as plaintiffs. At a final joint pre-trial conference on December 31, 1971, it was stipulated by the parties to all four actions that any evidence heard in relation to any one case could be considered by the court with regard to all cases.

BACKGROUND TO PRESENT LITIGATION

Earlier efforts to secure constitutionally sound legislative districting in Texas are recorded in *Kilgarlin*

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[3]The Senate apportionment plan was not challenged on the basis of population deviation, although the total deviation is 4.5%, involving 16,213 people.

[4]Compare also Bussie v. McKiethen, 5 Cir. [No. 71-2783, September 14, 1971] in which the Court of Appeals did not require a three-judge court when the redistricting issue was raised in part under 42 U.S.C.A § 1971(g), the Voting Rights Act, which empowers a single-judge court to act when no application for a three-judge court is made by the Attorney General or a defendant. The Voting Rights Act is not applicable to Texas. In addition, the plan presented by the State of Louisiana was disapproved by the Attorney General of the United States, pursuant to 42 U.S.C.A. § 1973(c), prior to adjudication by a single judge; thus, there was no state plan amenable to injunction.

v. Martin, S.D. Tex. 1966 (three-judge court), 252 F.Supp. 404, *rev'd sub nom., Kilgarlin v. Hill*, 386 U.S. 120 (1967).

Under the provisions of Article 3, Section 28, of the Constitution of the State of Texas, a Legislative Redistricting Board is assembled if the Legislature fails to redistrict the State at its first regular session after the publication of each United States decennial census. Thus, the 62nd Session of the Texas Legislature, convened in January, 1971, was under constitutional mandate to redistrict both House and Senate.

No districting plan for the Senate was ever voted by the Legislature. The districting bill adopted for the House of Representatives was declared unconstitutional by the Supreme Court of Texas in *Smith v. Craddick*, 1971, 471 S.W.2d 375. The Legislative Redistricting Board then refused to redistrict the House, asserting that it had no power to do so. However, in *Mauzy v. Legislative Redistricting Board*, 1971, 471 S.W.2d 570, the Supreme Court of Texas issued a writ of mandamus ordering the Board to effect such redistricting. On October 15, 1971, the Board enacted a plan which redistricted the Texas Senate, and on October 22, 1971, it enacted a plan for the House of Representatives. Both plans are under attack in the current quartet of litigation.

I.

In *Reynolds v. Sims* the Supreme Court wrote:

> "By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to con-

> struct districts, in both houses of its legislature, as nearly of equal population as is practicable.
>
> * * * * *
>
> [T]he overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state."

377 U.S. 533, 577, 84 S.Ct. 1362, —, 12 L.Ed.2d 506, 536 (1964).

Subsequently, the Court made clear that whenever the fact of deviation from population equality is raised the burden falls upon the State to present "acceptable reasons for the variations among the populations of the various legislative districts." *Swann v. Adams*, 1967 385 U.S. 440, 443-444, 87 S.Ct. 569, —, 17 L.Ed.2d 501, 504. It also reiterated that allowable deviations were limited to those minor variations which "are based on Legitimate considerations incident to the effectuation of a rational state policy," *Reynolds v. Sims, supra*, 377 U.S. at 579, and which "may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination." *Roman v. Sincock*, 1964, 377 U.S. 695, 710, 84 S.Ct. 1462, —, 12 L.Ed.2d 620, 630.

In *Reynolds* the Court noted:

> "We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement."

377 U.S. at 577. While not departing from the recognition that "[*d*]*e minimus* deviations are unavoidable," *Swann v. Adams*, 385 U.S. at 444, in *Kirkpatrick v. Preisler*, 1969, 394 U.S. 526, 531, 89 S. Ct. 1225,

—, 22 L.Ed.2d 519, 524, a congressional redistricting case, the Court concluded:

> "We can see no nonarbitrary way to pick a cutoff point at which population variances suddenly become *de minimus*. Moreover, to consider a certain range of variances *de minimus* would encourage legislators to strive for that range rather than for equality as nearly as practicable."

Consequently, in *Kirkpatrick* the Court elucidated its previous statements by holding as follows:

> "[T]he 'as nearly as practicable' standard requires that the State make a good faith effort to achieve precise mathematical equality. See *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). Unless population variances among . . . districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small.
>
> * * * * *
>
> "[The Constitution] permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown."

394 U.S. at 530-531. Because of differing factual situations from State to State, including the total population and the number of legislative positions, it remains true that "[w]hat is marginally permissible in one State may be unsatisfactory in another, depending upon the particular circumstances of the case." *Reynolds v. Sims*, 377 U.S. at 578. The Supreme Court has implied its willingness to exercise greater "tolerance" in reviewing the State's justifiation for population deviation in the apportionment of State legislatures:

> "In implementing the basic constitutional principle of representative government as enunciated by the Court in Wesberry [*Wesberry v. Sanders*,

1963, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481]—equality of population among districts—some distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State. To do so would be constitutionally valid, so long as the resulting apportionment was one based substantially on population and the equal-population principle was not diluted in any significant way. Somewhat more flexibility may therefore be constitutionally permissible with respect to state legislative apportionment than in congressional districting."

Reynolds v. Sims, 377 U.S. at 577-578. *See also Abbate v. Mundt*, 1971, 403 U.S. 182, 91 S.Ct. —, 29 L.Ed. 2d 399, which upheld a county legislative apportionment with a total deviation of 11.9%. However, the Court itself made very clear that *Abbate* was *sui generis*, involving only local government apportionment. And the *Kirkpatrick* holding may substantially erode the "tolerance" dictum in *Reynolds*. In any case, the percentages upheld and rejected in other cases are of little enlightenment. The critical issue remains the same: Has the State justified any and all variances, however small, on the basis of a consistent, rational State policy? While confessing the impossibility of exactitude in striving to fulfill the constitutionally mandated concept of one person, one vote, one value, the Court insists on conformity to this fundamental premise:

"[I]f . . . population is submerged as the controlling consideration in the apportionment of

seats in the particular legislative body, then the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired."

Reynolds v. Sims, 377 U.S. at 581.

The 1970 Census reported the population of Texas as 11,196,730. The Texas House of Representatives is allotted 150 members. Hence, the average population per member is 74,645. According to the state's own figures, District 3 is overpopulated by 5.8% (4,298) and District 85 is underpopulated by 4.1% (3,081), for a total deviation of 9.9% (more than 7,300).*

*Furthermore, the State's method of computing deviations in the multi-member districts may distort the actual percentage deviations in those eleven districts. The method, which corresponds to a method that was disapproved by the district court in *Kilgarlin* with regard to flotorial districts, consists of dividing the total population of a multi-member district by the number of representatives allotted to it and then distributing the population deviation to each representative position as if each position constituted a single-member district, arguably resulting in a sort of buried flotorial district. But a multi member district is not a collection of single-member districts. It is one district, the plaintiffs contend, and the population excess or deficiency should be treated just like the population excess or deficiency in any other district: the total amount of deviation for the district should be calculated as a percentage above or below the single norm of the *ideal* district (74,645). The alleged distortion resulting from the State's calculation is best exemplified by the case of Dallas County. Alloted eighteen representatives for its population of 1,327,321, Dallas County is listed by the State as underpopulated by 1.2% (per representative position). If left undistributed, the total deviation for Dallas County, treated as one unit, would be approximately minus 21.6%. The parties' respective computations for Bexar County produce figures of plus .7% by the State and approximately plus 7.7% by the plaintiffs. Hence, the plaintiffs would calculate the total deviation for the State as about 29.3%, rather than 9.9%.

Since we have concluded that the 9.9% total deviation is not the result of a good faith attempt to achieve population equality as nearly as practicable, it is unnecessary for us to resolve this complex computational conflict. But we do think it significant to note that the total deviations for Dallas and

In all of the evidence presented in this case, the State has not attempted to explain in terms of rational State policy its failure to create districts equal in population as nearly as practicable, nor has the State sought to justify a single deviation from precise mathematical equality. The lengthy depositions of the members of the legislative redistricting board and of the staff members who did the actual drawing of the legislative district lines are devoid of any meaningful indications of the standards used.

We must conclude that the State simply has not justified, under the constitutional mandates that we are required to apply, the deviations that admittedly exist in the plan before us. The State has argued that the deviations are justified in order to comply with a long-standing state policy, embodied in Section 26 of Article III of the Texas Constitution, against crossing county lines. We agree with the State to the extent of saying that this Court would look askance at any wholesale and unnecessary mutilation of the political subdivision boundaries within the State. However, the preservation of county lines is simply not a per se justification for a population deviation. *Reynolds v. Sims, supra*; *Kirkpatrick v. Priestler, supra.* The real question is: Has Texas demonstrated a rational and consistent reason for maintaining its county lines at the admitted expense of greater disparities in population deviations? As the Texas Attorney General recognized in the predecessor case of *Kilgarlin*: "[C]oun-

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Bexar Counties, respectively, amount to about 16,000 people and 5,500 people, for a total of around 21,500 people. The percentage deviation figures are only a shorthand method of expressing the "loss," dilution, or disproportionate weighting of votes. Just as the Court in *Reynolds* concluded that legislators represent people, not trees or cows, so we would emphasize that legislators represent people, not percentages of people.

ty lines must be violated . . . to the extent necessary to carry out the mandate of the Supreme Court." 386 U.S. at 123 n. 2. The present plan cuts the boundaries of 19 counties. We have been given no explanation whatsoever of the rational and consistent state policy that would necessitate the following of county lines in apportioning the Texas Legislature at the admitted expense of a substantial population deviation.

The last clause of Article III, Section 26 of the Texas Constitution reads as follows:

> "[W]en any one county has more than sufficient population to be entitled to one or more Representatives, such representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties."

In 1965, pursuant to this proviso, the Legislature created several so-called flotorial districts. *See Davis v. Mann*, 1964, 377 U.S. 678, 686-687 n. 2, 84 S.Ct. 1453, —, 12 L.Ed.2d, 609, 615, for descriptions of such districts. These flotorial districts were disapproved by a three-judge federal court in *Kilgarlin v. Martin*, S.D. Tex. 1964, 252 F.Supp. 404, 418, *aff'd sub nom., Kilgarlin v. Hill, supra.* Consequently, the Texas Supreme Court enunciated a procedure to be followed thereafter to comply with the State constitutional mandate, subject of course to the superseding requisites of the Fourteenth Amendment:

> "4. With the nullification of the dictate relative to use of the surplus population (less than enough for a district) of a county which already has one or more representatives allocated thereto, it becomes permissible to join a portion of that county (in which the surplus population resides and which is not included in another district within

that county) with contiguous area of another county to form a district. For example, if a county has 100,000 population, and if a district of 75,000 population is formed wholly within that county, the *county* is given its district, and the area wherein the 25,000 live may be joined to a contiguous area."

Smith v. Craddick, 1971, 471 S.W.2d 375, 378. In 1967 the Legislature, following Kilgarlin, enacted a redistricting plan which was in conformity with the procedure subsequently approved for dealing with the surplus population in various counties. In the face of this unanimous and explicit directive of the State's highest tribunal, the legislative redistricting board, in four separate instances, has split the surplus population (the population greater than that allocable to a whole number of representatives) between two additional districts. Thus, Smith and Brazoria Counties received one whole representative, Hidalgo two, and Jefferson three; but the excess population in each county was divided between two other representatives' districts. The State has ventured no explanation whatsoever even of the necessity for these depredations against the State policy.

The only crossing of a county boundary for which the State suggested an explanation was that of Red River County. While it is certainly understandable that cutting some county line in this area was necessary because of the population and location of Bowie County, no justification was advanced for the resulting plus 2.2% deviation in District 1 (Bowie and part of Red River) or for the plus 2.9% deviation in District 9 (the other part of Red River and five other counties). Moreover, the policy of preserving the integrity of county lines has been blatantly violated by the slicing of Smith and Hidalgo Counties without any justifica-

tion to be found in the Fourteenth Amendment mandate for substantial equality. The State's figures show a plus 3.3% deviation for District 2 (one part of Smith and four other counties) and plus 2.6% deviation for district 14 (another part of Smith and three other counties). District 12, wholly within Smith County, contains only a plus .1% deviation. The State's figures also show a plus 1.5% deviation for District 51 (part of Hidalgo and part of Cameron County), a plus 2.2% for District 49 (another part of Hidalgo and three other counties), and a minus 2.9% in District 59 (a two-member district wholly within Hidalgo County). It should be emphasized that, leaving aside the deviations involved in the multi-member districts, unjustified deviations exist throughout the State, even in adjoining legislative districts. An example of the latter situation exists in East Texas, where District 3 (two whole counties) is overpopulated by 5.8% and District 4 (three whole counties) is underpopulated by 3.6%. The following list, which is not intended to imply an acceptable *de minimus* percentage, demonstrates the geographic distribution and varying make-up of the single-member districts with the largest deviations:

District	*Percentage Deviation*	*Location*
18	plus 3.4	two southeast counties
27	plus 4.2	two northeast counties
28	minus 3.1	two east central counties
30	plus 3.2	five south central counties
38	plus 5.7	three south central counties
39	plus 3.6	six south central counties
40	minus 4.1	two gulf coast counties
45	plus 4.6	six southwest central counties and part of Bexar County
54	plus 3.8	five north central counties

55	plus 3.1	six northwest central counties
57	plus 3.4	two Rio Grande Valley counties
62	minus 3.2	the "core" of Taylor County (Abilene)
66	minus 3.1	ten Panhandle counties
70	plus 4.3	nine Rio Grande Valley counties
77	plus 4.1	seven northwest counties
78	minus 3.7	part of Harris County
85	minus 4.1	part of Harris County
92	minus 3.7	part of Harris County

Even had the State demonstrated rational adherence to a State policy of not cutting county lines, deviations in several of the above districts would still be inexplicable. Adding a portion of Bexar County to the rest of District 45 increased its deviation by more than plus 4%. District 62 is totally surrounded by District 61, which has a minus 1.7% deviation; and District 61 is adjoined by District 55, which has a deviation of plus 3.1%. Having such large deviation in the three listed districts in Harris County is insupportable.

In addition to the fact that the State itself has not complied with the Texas Supreme Court's rulings in *Craddick*, we note that *Craddick* offers little if any satisfaction of the *Reynolds* requirement that a State must justify any population deviations. *Craddick* simply makes no effort to explain any rational state policies that may be ensconced in Article III, § 26 of the Texas Constitution and the relation of that provision to the apportionment requirements of the Fourteenth Amendment. In fact, the Texas Supreme Court made clear that

> ". . . [t]he constitutionality of this redistricting statute (Article III, § 26 of the Texas Constitu-

tion) is the only question presented to us by the briefs and record."

471 S.W.2d at 376. And the Texas Supreme Court correctly noted:

> "Again, all requirements of Section 26 [of Article III] are inferior to the necessity of complying with the Equal Protection Clause."

471 S.W.2d at 378. Finally, the Texas court concluded that the variegated disturbances of county lines perpetrated by the *Craddick* apportionment plan were not "either required or justified to comply with the one-man, one-vote decisions." 471 S.W.2d at 378. We fail to see how the State of Texas can argue that its own failure to produce evidence in *Craddick* regarding the constitutional mandates of the Equal Protection Clause can somehow help to explain satisfactorily its failure to justify its population deviations in the new plan that is challenged in the instant cases. *Craddick* stands primarily for the proposition that the restrictive language of Article III, § 26 of the Texas Constitution is not facially unconstitutional under the Federal Equal Protection Clause. Beyond that, the Texas Supreme Court summed up the general position that this Court must take:

> "[A] county may be divided if to do so is necessary in order to comply with the equal population requirement of the Fourteenth Amendment."

471 S.W.2d at 377.

From the evidence and the plan presented, this Court is forced to conclude that the State of Texas simply had no rational state policy in the apportionment plan that resulted in the population deviations previously discussed and in the disparate treatments of metropolitan areas. The plan before the Court was not a product

of legislative action, but of the action of a board of five members, only one of whom is a member of the legislature. It appears to this Court that the board never really acted as a board but only as individuals. There never seems to have been a tandem of operations among the board members with regard to the constitutional principles or even to any lesser policy guidelines. The committee met for hearings only four times. The full board did not participate in two of those meetings, and one member of the board testified that he did not pay much attention to the hearings in any event. The full board did not even meet to approve the final plan; it was merely passed around. In fact, only three members of the committee signed both plans. There is ample testimony that the board was given absolutely no legislative guidance, nor did the board begin from the legislative discussions that accompanied the earlier apportionment plans for Texas. As an example of what we must conclude to be considerable lack of rational direction, at no point in its deliberations did the board ever debate or discuss the general issue of single-member districts as opposed to multi-member districts, obviously a very important issue in any apportionment plan, and particularly in the Texas proposal. At no point in the case was there ever a rational and consistent explanation of the differing treatments accorded to Harris County as contrasted with every other metropolitan area in Texas. One conceivable and previously-urged "rational" explanation for these disparate treatments of metropolitan areas was thoroughly repudiated by the board's actions. In *Kilgarlin* the three-judge court was assured by the defendants* that the State's policy "limits the size of any multi-member district to fifteen Representatives" and that any coun-

*Two of the five board members were defendants in the *Kilgarlin* case.

ty that attained a million or more residents in the future would be subdivided for Representative districts. In their trial brief the State asserted that the explanation for the differing treatment of Dallas and Harris Counties was that whenever a county attained a million residents or was allocated fifteen legislators it would no longer be left as an at-large district. The district court in *Kilgarlin* approved the disparate treatment between Dallas and Harris Counties in the 1965 apportionment bill in reliance upon the State's representation that different treatment would be accorded a county once it attained a million population. Dallas County now has a population of well over one million, a greater population than Harris had in 1960. This earlier "policy" of the State of Texas was called to the attention of the redistricting board during its public hearings but was apparently ignored. The board's unexplained abandonment of an existing state policy belies the presence of any rational state policy.

This Court feels compelled to draw two conclusions from the evidence presented regarding the manner in which this plan was drawn:

First, whatever "tolerance" might conceivably attach to a State's explanation of deviations from a population ideal cannot reasonably or appropriately attach to the actions of a redistricting board which acted on the House of Representatives' plan only pursuant to a mandamus, *Mauzy v. Redistricting Board, supra*, and which proceded to draw its conclusions in the manner just sketched. *See Silver v. Brown*, 1965, 46 Cal. Rptr. 308, 405 P.2d 132; *Legislature of the State of California v. Reinecke*, Sacramento No. 7917 [January 18, 1972]. *See generally Connor v. Johnson*, 1971, —*U.S.* —, 29 L.Ed. 2d 268, 91 S.Ct. —. We have serious doubts that this board did the sort of deliberative job contemplated by *Reynolds* as worthy of judicial abstinence.

Second, the State has failed to establish any rational and consistent state policy that would explain, let alone justify, its deviations from the constitutional principles of *Reynolds* and its progeny. Texas has also failed to provide rational justification for the haphazard combination of single and multi-member districts at issue in this case. This irrrationality, without reasoned justification, may be a separate and distinct ground for declaring the plan unconstitutional. Arguably, the Fourteenth Amendment forbids a plan that reflects "no policy, but simply arbitrary and capricious action," *Baker v. Carr*, 1962, 369 U.S. 186, 226, 82 S.Ct. 691, —, 7 L.Ed.2d 663, 691, *Reynolds v. Sims, supra,* and which is not "free from any taint of arbitrariness or discrimination," *Roman v. Sincock, supra*, entirely independent of any population deviations: "To the extent that a state's legislative apportionment plan is conclusively shown to have no rational basis, such a plan violates the equal protection clause." *Davis v. Mann*, 1964, 377 U.S. 687, 694, 84 S.Ct. 1453, —, 12 L.Ed.2d 609, 619 (concurring opinion). *Cf. Swann, supra*, at 572. Even where there are theoretically valid rationales for deviating from exact population equality, those rationales must themselves be applied systematically throughout the state, not in an ad hoc manner in certain places and not at all in others. *See Kirkpatrick v. Priesler, supra.*

Several courts have invalidated plans containing unexplained mixtures of single and multi-member districts. In *Kruidenier v. McCullock*, 142 N.W.2d 355 (1966), the Iowa Supreme Court declared unconstitutional a reapportionment plan making one county a multi-member district while dividing the other counties into single-member districts. The court held that the scheme would not be sustained without reasoned justification. Since the State failed to show this, the court

declared the plan invalid. A federal district court in Pennsylvania invalidated a reapportionment plan which, like the Texas scheme, contained a "curious pattern of representative districts in the larger counties." *Drew v. Scranton*, N.D. Pa. 1964, 229 F.Supp. 310, *vacated and remanded on other grounds*, 1964, 379 U.S. 40, 85 S. Ct. 207, 13 L.Ed.2d 107. The district court particularly condemned the inconsistent and irrational method used in distributing single and multi-member districts. The court described a situation closely analogous to the one in this case:

> "Defendants have offered no explanation for thus dividing 14 of the larger counties entirely into single member districts while at the same time, dividing the 15 other larger counties, many of them adjoining the single-member district counties, into a crazy quilt of 1, 2, 3, & 4 member districts. . . . In the absence of any legislative history or other explanation justifying it and we have found none, we can only conclude that this districting is either the result of gerrymandering for partisan advantage . . . or that it is wholly arbitrary and capricious. The plaintiffs' contention is that thus providing a haphazard arrangement of 2, 3, & 4 member districts alongside of single member districts violates the basic principle of one man, one vote, which is, as we have seen, implicit in the constitutional sense of equal protection of laws in this field. We are constrained to agree with this contention."

229 F.Supp. 236.

The most important inconsistency to be found in the Texas House plan is the different treatment given to the heavily populated counties. Harris County, the largest, is split into 23 single-member districts; all the other populous and metropolitan counties are put in multi-member districts of varying numbers of members,

ranging up to 18 for Dallas County. Three of the 11 multi-member districts comprise entire counties (Travis, McLennan, and Dallas); in the other eight multi-member districts, the district lines cut boundaries without rhyme or reason. The board's mixture of multi-member districts is not explicable as an effort to preserve county lines or to achieve substantial population equality. The plan cannot be justified on the ground that it reduced deviations in population. Nor can the State justify the present plan on the basis of past State policy of either preserving county lines or limiting the size of districts. *See Kilgarlin v. Martin, supra.* The claim that Dallas was kept at-large to conform to popular sentiment is simply contradicted by the record; moreover, even if the board based its treatment of Dallas on grassroots sentiment, it could not constitutionally apply this standard in selected areas only. *See Kirkpatrick v. Preisler, supra.* More important, as the Supreme Court held:

> "An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme fails to measure up to the requirements of the Equal Protection Clause."

Lucas v. Colorado General Assembly, 1964, 377 U.S. 713, 736, 84 S.Ct. 1472, —, 12 L.Ed.2d 632, 647.

II.

Because of our holding under *Reynolds*, we are not compelled to decide other questions raised by the plaintiffs pertaining to the entire State of Texas, although we do feel compelled to reach conclusions later in the opinion with regard to specific metropolitan areas.[1]

[1]Attorneys for the plaintiffs in the cases originally filed in the Eastern, Northern, and Western Districts indicated to the

Although we approach the apportionment question with restraint, as we have indicated earlier, we would not fulfill our judicial responsibilities if we were to ignore the development of some major points of consideration for the Legislature, specifically considerations regarding multi-member districts. Therefore, when the Legislature reconsiders the general redistricting question, in conformity with our holding in Parts I, III, and IV, we believe that the following points should be given consideration in light of recent Supreme Court decisions and of the very real possibility of future litigation.

While multi-member districts are not per se unconstitutional, neither are they constitutionally unassailable. *See generally, Whitcomb v. Chavis*, 1971, — U.S. —, 91 S. Ct. —, 29 L.Ed.2d 563; *Fortson v. Dorsey*, 1965, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401; *Burns v. Richardson*, 1966, 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed. 2d 376. The underpinning of the apportionment cases is the Fourteenth Amendment right of the individual voter to an effective vote within the general constructs of what is essentially a majoritarian system of repre-

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court that, because of the inherent time limitations incident to these actions, they would have difficulty in fully developing the evidence relating to their claims regarding multi-member districts other than Dallas and Bexar, and that therefore they would confine their evidence to the situations obtaining in those two counties. In response to this situation the Assistant Attorney General, representing the State at the preliminary pre-trial conference on December 22, 1971, observed:

> "This is my personal view entirely, but I would think that the Plaintiffs' case can either be made or not be made in two or three of the major metropolitan areas, and I would anticipate, at least, that if the multimember districting were knocked out, say, in Dallas and Tarrant County and Bexar County, that probably it would not be used elsewhere either, so that I have some difficulty personally in seeing the necessity of trying these issues as to eleven different metropolitan areas."

sentative government. *See generally, Reynolds v. Sims, supra*; *Kirkpatrick v. Priesler, supra*; *Swann v. Adams, supra.* To our mind, a critical adjunct to the right to an effective vote is the First Amendment right to associate politically, whether in majority or minority. *See Williams v. Rhodes*, 1968, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24; *see generally, NAACP v. Button*, 1963, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405; *NAACP v. Alabama*, 1958, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed. 2d 1488; *See also Carter v. Dies*, N.D. Tex 1970 (three-judge Court), 321 F.Supp. 1358.

While the Fourteenth Amendment does not prohibit all unequal treatment of individuals or groups and does permit rough accommodations, it does prohibit "invidious discrimination." *Harper v. Virginia Board of Elections*, 1966, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed. 2d 169.

> "[T]he concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged."

Reynolds v. Sims, 377 U.S. at 565. Whenever a State fashions a system that provides for unequal treatment among citizens who are roughly within the same congeries of circumstances, with regard to the "fundamental political right, of the vote, *Yick Wo v. Hopkins*, 1886, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220, or to the First Amendment right to associate "for the advancement of political goals," *Williams v. Rhodes, supra*, that State would be required to justify its unequal treatment on the basis of a "compelling state interest," *NAACP v. Button, supra. See generally, Harper v. Board of Elections, supra*; *McDonald v. Board of Election Commissioners of Chicago*, 1968, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739; *Kramer v. Union Free*

School District, 1969, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583; *Cipriano v. Houma*, 1969, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647. This is particularly true when the state's distinctions in these fundamental areas are drawn on the basis of wealth. *See Harper v. Board of Elections, supra*; *Carter v. Dies, supra*; *see also Rodriguez v. San Antonio Independent School District*. No. 68-175-SA [December 23, 1971]. Of course discriminations within the law that affect political candidates correspondingly affect the right to vote and the right to associate politically, *Williams v. Rhodes, supra*. Therefore, if it can be established that a particular electoral apportionment scheme or even an entire electoral mechanism, discriminates among candidates and political groups on the basis of wealth, the test that the State must meet in order to justify the continuing inequality of treatment is one of compelling state interest.*

Some of plaintiffs before this Court are office-holders and potential candidates. And of course when we adjudicate the apportionment question or when the Legislature deliberates the question, the Court or the Legislature is also affecting the rights of candidacy and of political association.

It has been clearly established in the proceedings before this Court that it simply costs more for a candidate to run and to communicate with his or her electorate in any multi-member district than it does in any single-member district given roughly similar geographic and demographic circumstances, specifically given

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*"To discriminate against voters or candidates on the basis of the depth of their pocketbooks . . . is to wade into unconstitutional waters."

Carter v. Dies, 321 F.Supp. at 1364 (Thornberry, J., concurring).

a metropolitan area.[9] The sheer numbers of people with whom one must communicate as a candidate vary enormously between multi-member and single-member districts. While the "ideal" Texas district is one of just more than 74,600 people, a candidate for one of the eighteen seats to the Legislature from Dallas County must campaign to over 1,300,000;[10] a potential candidate in Bexar County must plan on communicating to over 800,000; in Tarrant County a candidate must try to appeal to more than 600,000; and even in the smallest multi-member district, a part of Hidalgo County, a hopeful candidate must still take his campaign to 145,000 people. In addition, when the size of the campaign territory is increased to well over that of the ideal single-member district, as it is in every metropolitan multi-member district in Texas, the record establishes that the methods of campaigning become different and more expensive. When a candidate campaigns in a compact metropolitan area to a population of from 145,000 to 1,300,000 he must turn to high-expense methodology, such media as television, radio, or large newspaper spreads. If he were running in the "ideal" district, with only 74,600 people to reach, the record indicates that a candidate would be able to, and

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[9]Of course the costs of campaign and communication vary substantially within Texas on the basis of geography alone; the costs in a single-member district in West Texas, for example, would differ, perhaps substantially, from the costs for a similar campaign or communication in a single-member district in an urban area such as Harris County. For a variety of demographic or geographic considerations, the expenses of campaigning and communicating may differ radically among political subdivisions without impinging on constitutional rights guaranteed to individuals and to groups. However, that observation does not answer the constitutional problem here.

[10]One witness estimated that a campaign for a House seat in Dallas by an individual candidate not running on a slate would cost about $87,000; the salary of a Texas Representative is $4,800 per year.

inclined to, employ less costly methods of campaigning and avoid television expenses in particular. All of this is not to say that television time, for example, is required by the adoption of any particular districting processes. It is to say, however, that there are substantial cost differences in campaign and communication expenses that are necessary in order to make a tenable showing as a candidate in a multi-member metropolitan district, that such costs in multi-member districts may operate to eliminate or to delimit candidates and political associations that would otherwise be able to wage more tenable campaigns, and that such differences in cost between single-member and multi-member districts are the result of the state action of redistricting.

Whether or not this inequality in campaigning costs between multi-member and single-member districts would be enough to invalidate all multi-member districts on First and Fourteenth Amendment grounds, independent of any disparate treatment among similar areas, we do not decide here. We doubt that such inequalities amount to invidious discrimination. The record before us is just not adequate in its facts to support the proposition that an identifiable individual candidate or political group in every Texas city has been discriminated against invidiously on the basis of wealth by the use of multi-member districts. To our knowledge the Supreme Court has not confronted this issue in any of the cases in which multi-member and single-member districts have been discussed, and we do not reach that precise issue in our case.

However, we do find in the Texas plan an anomalous bit of redistricting that does raise a considerable Equal Protection question along the same theoretical lines that we outlined above with regard to candidates and political associations. Whatever else may be said about

single-member districts versus multi-member districts, it is clear that they create radically unequal expense problems for candidates who wish to run for office in areas with very similar geographic and demographic characteristics. Every multi-member district in Texas is a metropolitan area. And every major metropolitan area of Texas has been multi-member districted, save one. The fact that Harris County (Houston) has been divided into single-member districts means that a candidate running in Harris County for the Texas House is treated by Texas law in a manner that differs substantially from the treatment according to candidates running for the Texas House from every other metropolitan area in Texas. That difference in treatment results in a classifying of candidates and their abilities to run and to form political associations according to wealth, affecting basically and unequally the poor, *see Harper v. Board of Elections, supra*, and those not members of established political parties, *see Williams v. Rhodes, supra*. We emphasize that this is not a classification of differing groups with differing geographic and demographic surroundings, but of very similar urban electorates living in very similar geographic and demographic surroundings. In general, candidates from the cities must confront very similar problems and issues. The differing treatment of Harris County appears to result in a substantive inequality on the basis of wealth in the protection afforded by the State's electoral laws to the rights of political association and voting."

"The fact that a candidate might be able to decrease his or her expenses by joining the Democratic or Republican Party, or by running on an established slate, does not satisfy the requirements of the First and Fourteenth Amendments. See Williams v. Rhodes, *supra*; Carter v. Dies, *supra*. Nor does running through a particular party or on a particular slate

The question then becomes: Has Texas demonstrated a compelling state interest for treating the candidates and political associations of Houston in a way different than it treats the candidates and political associations of other metropolitan areas of Texas? The State argues that it was following the "wishes of the people" when it dealt with its metropolitan areas. The argument simply does not ring true. The record demonstrates at several points that the people of Dallas indicated their overwhelming desire, by poll, for single-member districts; that evidence was placed before the redistricting board by several witnesses at its hearings, and the committee either ignored or denied those wishes. At the same time, there is no evidence in the record that the redistricting board had before it any coherent "wishes of the people" of Houston or of any other area. The only reason assigned for this difference of treatment between Houston and every other metropolitan area is that some atmospheric sounding emanating from Harris County differed from those coming from other metropolitan counties. Such sonars must have some substantive or scientific basis for measurement data. It appears to this Court that if a State elects to use the "wishes of the people" to treat metropolitan areas differently and unequally, then it is under some obligation to do a more thorough job of investigating the real "wishes of the people" than was done by the Redistricting Board. Even if the atmospheric soundings were eventually adequate as a statistical matter, it is very questionable whether the State could submit opinion polls as a complete justification for taking constitutionally suspect action in apportioning a state legislature. *See Hall v. St. Helena Parish School Board,*

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appear to diminish substantially the cost differentials between urban multi-member districts and urban single-member districts in Houston.

E.D. La. 1961, *aff'd*, 1962, 368 U.S. 515, 82 S.Ct. 529, 7 L.Ed.2d 521, *cited with approval in Lucas v. Colorado General Assembly*, 1964, 377 U.S. 713, 84 S.Ct. 1472, 12 L.Ed.2d 632. And, of course, any rationale, including opinion polls, would have to be applied equally to all areas of the State, not followed for one and ignored in others.

A second argument advanced by the State for its anomalous treatment of Harris County is what might be termed the "*Whitcomb v. Chavis* argument": that multi-member districts are constitutionally immune unless they dilute a racial or political element of the electorate. We simply point out that *Whitcomb* at no point discussed the relationship of multi-member districts to candidates and political associations. In addition, the Supreme Court in *Whitcomb* was not faced with different districting treatment according to similar metropolitan areas; the large urban areas of Indiana were treated in the same manner. There was an underlying rationale to the *Whitcomb* discussion of multi-member districts in Indiana: the State of Indiana argued that cities have city-wide problems and should elect city-wide representatives. Whatever might still be argued concerning the various factors within that justification for multi-member districts in *Whitcomb*, it is clear that Texas cannot offer the same rationale for its apportionment of its cities. The different treatment of Houston refutes the *Whitcomb* rationale at the threshold, and Texas confronts an entirely different Equal Protection question. Texas simply cannot justify its different treatment of Houston candidates on the basis of *Whitcomb* because its own internal inconsistencies in its treatment of Texas cities erases the general *Whitcomb* rationale for maintaining multi-member districts in metropolitan areas.

Texas also points to the *Kilgarlin* case, in which a three-judge district court and then the Supreme Court upheld a treatment for Houston that differed from that accorded to every other Texas city. In the plan under discussion in *Kilgarlin*, Houston was divided into thirds, along congressional district lines, while all other metropolitan areas in Texas were left as county-wide multi-member districts. Again, we point out that neither the district court nor the Supreme Court discussed the allegedly unequal treatment of candidates or political groups that may have resulted from that differing treatment. In addition, a division into thirds may not create the vast inequalities of expense that a division into single-member districts creates. Finally, we would note that the justification for differing treatment that was accepted by the courts in *Kilgarlin* was, like the *Whitcomb* justification, accepted for an underlying reason. The district court accepted the distinction that the State drew in 1966 between counties with more than one million people and those with less than one million; the State contended that the sheer numbers and the resulting confusion that would probably occur in the electorate when the number of representative slots reached 15 necessitated a different treatment for the one million-plus counties. *See Lucas v. Colorado General Assembly, supra.*[18] Like the rationale of *Whitcomb*,

[18] "One of the most undesirable features of the existing apportionment scheme was the requirement that, in counties given more than one seat in either or both of the houses of the General Assembly, all legislators must be elected at large from the county as a whole. Thus, under the existing plan, each Denver voter was required to vote for eight senators and 17 representatives. Ballots were long and cumbersome, and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies within the populous counties resulted, and the residents of those areas had no single member of the Senate or House elected specifically to represent them."
377 U.S. at 731.

we do not believe that the rationale accepted in *Kilgarlin* can explain a compelling State interest in this present incarnation of different treatment for Harris County. As we have indicated earlier in the opinion, Dallas County in 1971 fits all the elements of the *Kilgarlin* rationale for single-member districting, and yet Dallas remains a multi-member district, against the wishes of Dallas citizens we might add, while Houston has been subdivided even further than it was in the 1966 plan discussed in *Kilgarlin*. We can only conclude, as we did earlier, that there is simply no credibility left in the rationale advanced by the State in *Kilgarlin*. A state that inexplicably abandons an allegedly "compelling state interest" only five years after arguing it can hardly raise it from the dead at this point in the apportionment process.

Finally, the State argues that multi-member districts for metropolitan areas have long historical roots in Texas. Even given that fact, it simply does not explain the different treatment given to Houston. With the exception of the 1965 plan, the *Kilgarlin* plan discussed earlier, Houston has been treated under the same "historical" aegis as any other Texas city. We are at a loss to understand how Texas history can support a compelling state interest in multi-member districts for all cities when that history has suddenly done a complete about-face for the largest metropolitan area in the State. In addition, we would point out that history is a questionable justification for unequal treatment in a state with a history of rather active segregation and a state which has always been a "one-party" state. *See Bussie v. McKiethan*, 5 Cir., No. 71-2698 [September 4, 1971]. The underlying rationales of the Texas tradition of multi-member districts in metropolitan areas might very well be precisely those rationales condemned in recent constitutional decisions. We

emphasize that we are not indulging in any sort of speculation whatsoever regarding the rationales for the political subdivisions of Texas. We are simply noting that Texas cannot rationally and consistently justify its different and unequal treatment of Houston and Houston candidates on the grounds of historical precedent. In addition to the factors discussed in other parts of the opinion, *see Reynolds v. Sims, supra*; *Kirkpatrick v. Priesler, supra*, the fact that Harris County has been treated differently, even though it falls within the same historical context as any other city, makes the position internally inconsistent.

Given the record before us, this Court must note that Texas has not established a compelling state interest, nor even a "rational relationship,'"[11] to justify its disparate and unequal treatment of Harris County and every other metropolitan area in Texas. Because of the unjustified differentiation between Harris County and every other metropolitan area with regard to the expense of running for office and of communicating with an electorate, the use of multi-member districts in Texas cities is subject to serious constitutional question on the bases of the First Amendment, the Due Process clause, and the Equal Protection clause. The other side of the candidate coin is that (sic) fact that the electorate is much further removed from its elected representative in Dallas or Fort Worth or El Paso, for

[11]Even if the State were forced to meet only the lesser test of showing a "rational relationship" between its unequal treatment of Houston candidates and political associations and a state policy, we would be forced to conclude that Texas simply has not done so on this record. The disparate apportionment of Harris County renders questionable or outright irrational the justifications that the State has proposed for continuing to sanction vastly different campaign and communication costs among its urban representatives and urban electorates. See Harper v. Board of Education (Harlan, J., dissenting).

example, than is the electorate for the same office in Houston. While we are far from the Jeffersonian ideal or the modes of Grecian democracy, this voter anonymity, this contracting the voter to be a mere speck in a magnitudinous cosmos, takes us far from the founding fathers' concept of citizen participation.

III.

One of the contentions of the Dallas plaintiffs is that the use of a multi-member district in Dallas County in the legislative redistricting plan operates to minimize or cancel out the voting strength of the black minority. Of course, it is settled law that apportionment schemes employing multi-member districts will constitute an invidious discrimination if it can be shown that "designedly or otherwise, a multimember constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." *Fortson v. Dorsey*, 379 U.S. at 439. In its most recent pronouncement concerning the constitutionality of multi-member districts, the Supreme Court reaffirmed this principle. The case of *Whitcomb v. Chavis, supra*, involved a constitutional challenge to the multi-member state legislative districts in Marion County, Indiana (Indianapolis), which has a population of 700,000 and a plurality voting system, but no provision for at-large candidates running from particular geographical subdistricts. The plaintiffs' case consisted primarily of proof that blacks in Indianapolis were concentrated in a ghetto area, that they had special interests in certain issues, that a disproportionately low percentage of legislators in the past ten years came from the ghetto, and that there was a high degree of political party control over the nomination of candidates and the voting patterns of the legislative

delegation. On the basis of this evidence the Supreme Court concluded:

> "We are unprepared to hold that district-based elections decided by plurality vote are unconstitutional in either single- or multi-member districts simply because the supporters of losing candidates have no legislative seats assigned them."

403 U.S. at 160. Essentially, the Supreme Court determined that the plaintiffs in *Whitcomb* only established that the failure of the black ghetto to have legislative seats in proportion to its population was solely the result of political defeat at the polls rather than a built-in bias against blacks. Indeed, the Court held that

> "the fact that a number of ghetto residents who were legislators was not in proportion to ghetto population [does not] satisfactorily prove invidious discrimination *absent evidence and findings that ghetto residents had less opportunity than did other Marion County residents to participate in the political processes and to elect legislators of their choice.*"

29 L.Ed.2d at 379 (emphasis supplied).

Before directing our attention to the evidence in the instant case, we think it important to detail the salient features of the Texas electoral system and their impact upon the black minority. Under the legislative plan enacted by the Legislative Redistricting Board, Dallas County comprises a multi-member district with a population in excess of 1,300,000. Thus, Dallas County's multi-member district is approximately three times as large as a congressional district in Texas, almost twice the size of the multi-member district that the Supreme Court had before it in *Whitcomb v. Chavis*, and it has a population greater than that of fifteen

states." In addition, unlike the plurality system in Indiana, Texas has a strict "majority" requirement in the primary. Virtually unknown outside the South, the majority requirement has not escaped considerable criticism on both Fourteenth and Fifteenth Amendment grounds. *See Evers v. State Board of Election Commissioners,* S. D. Miss., 1971, 327 F.Supp. 640; *Boineau v. Thornton,* E.D. S.C. 1964, 235 F.Supp. 175. Whatever its constitutional status, it is clear that the majority system tends to strengthen the majority's ability to submerge a political or racial minority in a multi-member district. In combination with the majority requirement, there exists in the Texas political repertoire the "place" requirement. In essence, each candidate must limit his candidacy, in either a primary or a final election, to a particular place on the ballot. Since the place requirement means absolutely nothing in terms of residence, its ultimate effect is to highlight the racial element where it does exist. Furthermore, in multi-member districts in Texas there exists no provision for at-large candidates running from particular geographical subdistricts. Thus, in Dallas County it is entirely possible for each and every one of the district's eighteen representatives to reside in the same apartment complex. Finally, we note that unlike the State of Indiana, Texas has a rather colorful history of racial segregation. There exist innumerable instances, covering virtually the entire gamut of human relationships, in which the State has adopted and maintained an offi-

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[1]The Dallas County multi-member district has a greater population than the following states: Alaska (302,173); Delaware (548,104); Hawaii (769,913); Idaho (713,008); Maine (993,663); Montana (694,409); Nevada (488,738); New Hampshire (737,681); North Dakota (617,761); New Mexico (1,016,000); Rhode Island (949,723); South Dakota (666,257); Utah (1,059,273); Vermont (444,732); and Wyoming (332,416).

cial policy of racial discrimination against the Negro." Indeed, even the Negro's right to vote and to participate in the electoral process has not remained untouched by the State's policy." Therefore, it is not unlikely that Texas' use of multi-member districts, taken in the entirety of Texas electoral laws and of Texas history, unconstitutionally infringes the voting rights of racial and political minorities in all Texas cities that are districted as multi-member. However, we find it unnecessary at this time to so hold, for we conclude that the Dallas plaintiffs have also shown that

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"See, e.g., Beal v. Holcombe, 1951, 193 F.2d 384 (city ordinance setting aside public parks for the exclusive use of Negroes and providing that all other public parks were for the exclusive use of white people held unconstitutional); Tippins v. State, Tex.Cr.App. 1920, 217 S.W. 380 (holding that a complaint charging delinquency need not allege that a child is white or black because under the Texas Code of Criminal Procedure a separate place of confinement is provided for Negro delinquents); Strauss v. State, Tex.Cr.App. 1915, 173 S.W. 662 (upholding the constitutionality of a city ordinance making it unlawful for a white person and any Negro to have sexual intercourse with each other within the city limits); In Re Gomez, Tex.Civ.App. 1967, 424 S.W.2d 656 (holding unconstitutional a statute prohibiting the adoption of a white child by a Negro person or of a Negro child by a white person); Harvey v. Morgan, Tex.Civ.App. 1954 (criminal provision prohibiting any fistic combat, match, boxing, sparring or wrestling contest or exhibition between any person of the white race and any person of the Negro race held unconstitutional); O'Connor v. Dallas Cotton Exchange, Tex.Civ.App. 1941 (plaintiff held to allege a cause of action when his wife was wrongfully excluded from a passenger elevator set apart for whites and compelled to ride in an elevator set aside for Negroes).

"See, e.g., Nixon v. Herndon, 1926, 273 U.S. 536 (holding unconstitutional a Texas statute prohibiting Negroes from participating in the Democratic party primary election). Indeed, as recently as 1966 the State of Texas required the payment of a poll tax in order to vote. In striking down the poll tax requirement, a federal court found that the tax had originally been imposed in 1902 for the purpose of disenfranchising the Negro. United States v. State of Texas, W.D.Tex. 1966, 252 F.Supp. 234, 245, affirmed 384 U.S. 155.

the use of a multi-member district in Dallas County violates the equal protection clause in accordance with the standards of proof enunciated in *Whitcomb*.

In addition to the above factors, the Dallas plaintiffs have shown not only that the number of black community residents who have been legislators is not in proportion to ghetto residents, but also that the black community has been effectively excluded from participation in the Democratic primary selection process. As a factual matter, Negroes in Dallas County vote primarily for candidates of the Democratic party. Furthermore, we find that it is extremely difficult to secure either a representative seat in the Dallas County delegation or the Democratic primary nomination without the endorsement of the Dallas Committee for Responsible Government (hereinafter referred to as the DCRG). Furthermore, it has been shown that white candidates endorsed by the DCRG in either a primary or general election can win in a county-wide race without appealing to the Negro vote. Essentially, the plaintiffs have shown that the DCRG, without the assistance of black community leaders, decides how many Negroes, if any, it will slate in the Democratic primary.[11] The DCRG then informs some black community leaders of its decision and requests that those leaders select the Negro candidate. It is significant that the DCRG makes its decision with respect to how many Negro candidates it will slate, and not how many candidates it will slate who are sympathetic to the problems and interests of the black community. Thus, the facts clearly show that the Negro community in Dallas County participates in

[11]Since the Reconstruction Era, there have been only two blacks from the Dallas County delegation to the Texas House of Representatives. In addition, these have been the only two blacks ever slated by the DCRG, and the first was not until 1966.

the selection of the Democratic primary candidates only in the recruiting process. But it is hardly adequate, for purposes of claiming effective participation, to say that the black community is consulted with respect to the sole black candidate placed on the DCRG slate. The requirement of effective participation can be answered only by showing that the interests of the black ghetto, like those of the white areas, are taken into consideration in the formulation of the entire slate. It is clear from the evidence in this case that such consideration never occurs. In essence, we find that the plaintiffs have shown that Negroes in Dallas County are permitted to enter the political process in any meaningful manner only through the benevolence of the dominant white majority. If participation is to be labeled "effective" then it certainly must be a matter of right, and not a function of grace.

Finally, we think that the record evinces a recurring poor performance on the part of the Dallas County delegation concerning the representation of black interests in the Texas House of Representatives. State legislators from Dallas County, elected countywide, led the fight for segregation legislation during the decade of the 1950's. Indeed, the record reveals that during the late 1950's not one member of the Dallas County delegation voted against certain segregation measures introduced in the Texas House. Moreover, it has been shown that hostility toward the black community is still an integral part of Dallas County politics."

"The record in *Whitcomb* showed that Indiana is the millenial society where race plays no part in politics. The *Whitcomb* record showed the following: There were incidents of public and private discrimination in Indianapolis in the late 19th and early 20th centuries, but the record shows none after 1926; Indiana has had a civil rights law since 1885, and enacted a new civil rights law in 1969; the election results show a strong two-party system, with votes cast along political

As recently as 1970, the DCRG was relying upon racial campaign tactics in white precincts to defeat candidates who had the overwhelming support of the black community. So long as the organization that dominates the county-wide Democratic primary in Dallas County relies upon such a racial appeal to defeat black favored candidates, we think it highly unlikely that candidates elected on such a platform could seriously represent in the Texas Legislature the best interests of Dallas' black community.

We conclude that the Dallas plaintiffs have shown, in accordance with the standards laid down by the Supreme Court in the *Whitcomb* case, that a multi-member district in Dallas County tends to dilute or cancel out the vote of Dallas County's Negro minority. Accordingly, we hold the use of a multi-member district in Dallas County unconstitutional.

IV.

The United States Supreme Court has long recognized that Chicanos, as well as Blacks, require the protective intervention of the Federal Courts:

> "The State of Texas would have us hold that there are only two classes—White and Negro—within the contemplation of the Fourteenth Amendment. The decisions of this Court do not support this

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party lines rather than racial lines, both in the ghetto area and elsewhere; party nominations are made at primary elections, where those who have been "slated" by the party organization were invariably successful; the slating (at least for Democrats) is done at a convention of precinct chairmen, both black and white; the success of party nominees almost invariably depends upon the success of the ticket; blacks typically vote Democratic, and form a substantial part of the Democratic Party's strength; the predominance of party discipline over race is shown by the 1968 general elections in which three blacks were elected on the Republican ticket county-wide but finished well *behind* white Democratic opponents in the ghetto.

view.' See *Truax v. Raich*, 392 U.S. 33, *Takahashi v. Fish and Game Commission*, 334 U.S. 410. *Cf. Hirabayashi v. United States*, 320 U.S. 81,100: "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."

* * * * *

"Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the law. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class' theory —that is, based upon differences between 'White' and Negro. *Hernandez v. Texas*, 347 U.S. 475, at 478 (1954)."

The existence of a recognizable Mexican-American minority is further evidenced by recent decisions of Federal Courts throughout the State. In *Pablo Puente v. City of Crystal City, Texas*, No. DR-70-CA-4 (April 3, 1970), the Court found that the real property ownership requirement incorporated in the Charter of Crystal City for candidates for city office was invidiously discriminatory against the Mexican-American Plaintiffs and their class and hence was unconstitutional.

Concerning the Corpus Christi Independent School District in Nueces County, Texas, a Court ruled that

Texas was segregating Mexican-American students (which were found to constitute a readily identifiable ethnic-minority group or class) in the public schools on the basis of race, color, or national origin. *Cisneros v. Corpus Christi Independent School District* (S.D. Tex. 1970) 324 F.Supp. 599.

The Court of Appeals for the Fifth Circuit has held that the record supported allegations that there had been discrimination in the selection of the Grand Jury in El Paso County, Texas that indicted the Mexican-American petitioner and that the State of Texas had failed to recognize the right of Mexican-American defendants to protest exclusion or under-representation of Mexican-Americans in the composition of Grand Jury and Petit Jury venires. *Muniz v. Beto* (5th Cir. 1970) 434 F.2d 697.

The most recent decision in this area resulted from a suit brought by Mexican-American Plaintiffs in the Edgewood Independent School District in Bexar County, Texas, a district of near-total Mexican-American enrollment. The Court found the Texas public school financing structure unconstitutional on grounds that the quality of a student's education should relate to the wealth of the State as a whole and not to an individual district's real property tax reserve. *Rodriguez v. San Antonio Independent School District* (W.D. Tex., Dec. 23, 1971) Civil Action No. 68-175-SA. Moreover, as stated in a scholarly note by Gerald M. Birnberg in the University of Texas Law Review, 49 Texas L. Rev. 337, 338 (1971), "The conclusion that ethnic isolation of Mexican-Americans in the public schools is unlawful should not be surprising, since that principle has long been established in Texas law." See generally *Jesus Salvatierra v. Inhabitants of Del Rio Independent School District*, 33 S.W. 2d 790 (Tex.

Civ. App. 1930), *appeal dismissed, w.o.j., and cert. denied*, 284 U.S. 580 (1931); *Delgado v. Bastrop Independent School District*, Civ. No. 388 (W.D. Tex. June 15, 1948); *Hernandez v. Driscoll Consolidated Independent School District*, 2 Race Rel. L. Rev. 329 (S.D. Tex. January 11, 1957). 49 Tex. L. Rev. 337 (1971): In *Cisneros*, supra, at 607, 608, Judge Seals said:

> "... [I] It is clear to this Court that these people for whom we have used the word Mexican-Americans to describe their class, group, or segment of our population, are an identifiable ethnic minority in the United States, and especially so in the Southwest [and] in Texas ... This is not surprising; we can notice and identify their physical characteristics, their language, their predominant religion, their distinct culture, and, of course their Spanish surnames. And if there were any doubt in this court's mind, this court could take notice, which it does, of the congressional enactments, government studies and commissions on this problem."

324 F. Supp. at 607-608.

Because of long-standing educational, social, legal, economic, political and other widespread and prevelant restrictions, customs, traditions, biases and prejudices, some of a so-called *de jure* and some of a so-called *de facto* character, the Mexican-American population of Texas, which amounts to about 20%, has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others.

In the words of a recent Texas Federal Court decision,

> "Mexican-American students in the State of Texas are a cognizable ethnic group and, hence, many

avail themselves of the protections afforded under the Fourteenth Amendment and under Title VI and the Mexican-American students in the Del Rio area have been subjected, over the years, to unequal treatment with respect to the educational opportunities afforded them and are, thus, part of a so-called *de jure* dual school system based upon separation of students of different ethnic origins." *United States v. Texas,* Civil Action No. 5281 (E.D. Tex. July 13, 1971)[18]

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[18]In the following language from Judge Roth's opinion in *Bradley v. Milliken*, Civil Action No. 35257 (E.D. Mich. Sept. 27, 1971), Bexar County and Mexican-Americans may readily be substituted, respectively, for City of Detroit and Blacks:

"The City of Detroit is a community generally divided by racial lines. Residential segregation within the city and throughout the larger metropolitan area is substantial, pervasive and of long standing. Black citizens are located in separate and distinct areas within the city and are not generally to be found in the suburbs. While the racially unrestricted choice of black persons and economic factors may have played some part in the development of this pattern of residential segregation, it is, in the main, the result of past and present practices and customs of racial discrimination, both public and private, which have and do restrict the housing opportunities of black people * * * *

"Governmental actions and inaction at all levels, federal, state and local, have combined, with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area * * * * The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community—as we know, the choice of a residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of 'harmonious' neighborhoods, *i.e.*, racially and economically harmonious. The conditions created continue. While it would be unfair to charge the present defendants with what other governmental officers or agencies have done, it can be said that the actions or the failure to act by the responsible school authorities, both city and state, were linked to that of these other governmental units. When we speak of governmental action we should not view the different agencies as a collection of unrelated units. Perhaps the most that can be said is that all of them, includ-

Chief Judge Brown has said that "[I]n the problem of racial discrimination, statistics often tell much, and courts listen." *Alabama v. United States*, 304 F.2d 583, 586 (Fifth Cir. 1962)

Bexar County, Texas contains areas of substantial Mexican-American concentration which are clearly de-

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ing the school authorities, are, in part, responsible for the segregated condition which exists. And we note that just as there is an interaction between residential patterns and the racial composition of the schools, so there is a corresponding effect on the residential pattern by the racial composition of the schools.

"As we assay the principles essential to a finding of de jure segregation, as outlined in rulings of the United States Supreme Court, they are:

1. The State, through its officers and agencies, and usually, the school administration, must have taken some action or actions with a purpose of segregation.
2. This action or these actions must have created or aggravated segregation in the schools in question.
3. A current condition of segregation exists. We find these tests to have been met in this case. We recognize that causation in the case before us is both several and comparative. The principal causes undeniably have been population movement and housing patterns, but state and local governmental actions, including school board actions, have played a substantial role in promoting segregation. It is, the Court believes, unfortunate that we cannot deal with public school segregation on a no-fault basis, for if racial segregation in our public schools is an evil, then it should make no difference whether we classify it de jure or de facto. Our objective, logically, it seems to us, should be to remedy a condition which we believe needs correction. In the most realistic sense, if fault or blame must be found it is that of the community as a whole, including, of course, the black components. We need not minimize the effect of the actions of federal, state and local governmental officers and agencies, and the actions of loaning institutions and real estate firms, in the establishment and maintenance of segregated residential patterns—which lead to school segregation—to observe that blacks, like ethnic groups in the past, have tended to separate from the larger group and associate together. The ghetto is at once both a place of confinement and a refuge. There is enough blame for everyone to share."

fined geographically and which have the characteristics of slum areas due to common adverse conditions relating to family income, housing, educational attainment and other matters. This is particularly true of the area known as the West Side in the City of San Antonio, Texas.

The record reveals that the predominately Mexican-American section of San Antonio (50% or greater) is included within 28 contiguous census tracts. In this area, also known as the Barrio, the average resident lives in the most seriously straitened and deprived circumstances. Mexican - Americans ("Chicanos") make up 78.54% of the population of the Barrio, which is 23.78% of the total population of Bexar County's population of 830,460. The Barrio includes 47.8% of the housing units in Bexar County valued at less than $5,000. Only 00.67% of the units valued at $50,000 or more are located in the area. The average home cost in Bexar County is $13,500, whereas in the Barrio, the average cost is $8,807.14. These census tracts also contain 58.5% of the total dwelling units lacking some or all plumbing units, at an average contract rental of $51.86, as opposed to $86.00 for the county as a whole.

The 1960 census figures also disclose that the Barrio at that time included 65.43% of the Bexar County population who had never attended school and only 5.26% of the county's college graduates. Also, it embraced 73.04% of the Bexar County families with median incomes under $5,000, as contrasted with only 2.18% of the Bexar County families with median income over $25,000. Although Barrio laborers made up 29.55% of the county's labor force, 46.33% of the Bexar County unemployed work force lived there. (The 1970 census figures in this regard were not available at the time of trial.)

It has been suggested that because Chicanos constitute about half the population of Bexar County, they cannot be a politically deprived ethnic minority. Such a suggestion misconceives the meaning of the word "minority." In the context of the Constitution's guarantee of equal protection, "minority" does not have a merely numerical denotation; rather it refers to an identifiable and specially disadvantaged group. That Mexican-Americans in Texas are such a group is well-established. With regard to Mexican-American children, one Court recently held that:

> "these students react to or are affected by a given stimulus—the Anglo-oriented educational program such as that maintained in the former Del Rio Independent School District—in a similar and predictable manner and, in the opinion of a recognized expert, this reaction is based almost entirely on common characteristics which, incidentally, may be traced to their common and distinct ancestry." *U.S. v. Texas*, Civil Action No. 5281 (E.D. Tex. July, 1971)

Consequently, in addition to the appalling conditions of poverty and its concomitants, most Chicano children in Texas face an often insurmountable cultural disorientation. The fact that they are reared in a subculture in which a dialect of Spanish is the primary language provides permanent impediments to their educational and vocational advancement and creates other traumatic problems. A "Report of the United State Commission on Civil Rights, March, 1970" (Plaintiff's exhibit, BI-12, p. 66) states that:

> "It is common in the Southwest, moreover, to find Mexican-Americans who speak Spanish in the home, with friends, on social occasions, and at work among other Mexican-Americans; they use English only as a second language when necessary. Many Mexican-Americans have enough familiarity with

English to get along, but have more difficulty than the average layman in understanding Courtroom proceedings and legal matters."

In the "Summary" of this Report (Plaintiff's exhibit BI-13, p. 16) the Commission concludes that Mexican-Americans in the Southwest have a language disability that seriously interferes with their relations with agencies and individuals responsible for the administration of justice. This results in an inability to communicate with police officers, probation and parole officers, their own attorneys in civil and criminal matters, and in other legal proceedings. Certainly, this language barrier is a *raison d'etre* for the Mexican-Americans label: "The Invisible Minority."

There is no aspect of human endeavor, in general and of American life in particular, in which the ability to read, write and understand a language is more important than politics. It should come as no surprise, then, to discover that Mexican-American participation in the political process of Bexar County is markedly deficient. Of course, there are many types of political alienation, and mere lack of participation by a particular group in the political process does not necessitate corrective action. But, just as Courts have drawn appropriate and necessary inferences from the absence of Mexican-Americans from jury venires, *Hernandez and Muniz*, supra, so they must regarding political participation.

There can be no doubt that lack of political participation by Texas Chicanos is affected by a cultural incompatability which has been fostered by a deficient educational system. If this court ignores the reason for the minimal impact of Mexican-Americans on Bexar County legislative elections, "it will prove that justice

is both blind and deaf." *Sims v. Baggett*, supra, at 109. See also *Sims v. Ames*, supra.

This cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the nation[11] have operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary.

In Bexar County, Texas securing the Democratic Party nomination for the Texas House of Representatives has been tantamount to election since no Republican has been elected to said House from Bexar County from 1880 to the present. In Bexar County, there is presently no formalized process by which the Democratic Party slates candidates in party primary elections for the Texas House of Representatives. The population of the West Side of San Antonio tends to vote overwhelmingly for Mexican-American candidates when running against Anglo-Americans in party primary or special elections, to split when Mexican-Americans run against each other, and to support the Democratic Party nominee regardless of ethnic background in the general elections. The record shows that the Anglo-Americans tend to vote overwhelmingly against Mexican-American candidates except in a general election when they tend to vote for the Democratic Party nominee whoever he may be although in a somewhat smaller proportion than they vote for Anglo-American candidates.

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[11]See *Breare v. Smith*, 321 F. Supp. 1100 (S. D. Tex. 1971) See also *Garza v. Preston Smith*, Civil Action No. SA-70-CA-169 (W.D. Tex., Oct. 16, 1971) in which the Court declared unconstitutional Articles 5.05(15) and 8.13 of the Texas Election Code as violative of the Equal Protection clause of the Fourteenth Amendment insofar as said articles forbade assistance to illiterate voters while granting such assistance to physically disabled and blind voters.

The cost of conducting electoral campaigns in countywide races in Bexar County is so excessive that this factor alone has inhibited the recruitment and nomination or election of Mexican-American candidates for the Texas House of Representatives. Reports of election expenses reveal that Anglo-American candidates for State Representative spent two to three times as much as Chicano candidates, and that contributions were heavily in favor of Anglo candidates.

Only four residents of the Barrio have run for the Texas House of Representatives since 1880, one in 1900 and the remainder since 1960. Of this number, two were Chicanos, one a Black, and the other an Anglo-American. And since 1880 only a total of five Mexican-Americans have served in the Texas Legislature from Bexar County.

An Anglo member of the House of Representatives from Bexar County was unable to identify any piece of legislation sponsored by any member of the Bexar County delegation at the last session of the Legislature to relieve or remedy the adverse conditions extant in the West Side. Of course, the Court in *Whitcomb*, supra, stated:

> "Nor does the fact that the number of ghetto residents who were legislators was not in proportion to ghetto population satisfactorily prove invidious discrimination absent evidence and findings that ghetto residents had *less opportunity* than did other Marion County residents *to participate* in the political process and to elect legislators of their choice." (Emphasis added.)

Naturally, this Court fully accepts Justice White's evaluation, but we note that he did correctly indicate that such facts, taken in conjunction with others, would be persuasive. It is not suggested that minorities have

a constitutional right to elect candidates of their own race, but elections in which minority candidates have run often provide the best evidence to determine whether votes are cast on racial lines. All these factors confirm the fact that race is still an important issue in Bexar County and that because of it, Mexican-Americans are frozen into permanent political minorities destined for constant defeat at the hands of the controlling political majorities.

In *Kramer*, supra, at 626, the Court held that:

> "Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials, undermines the legitimacy of representative government."

Just as the Court has invalidated "grandfather clauses," *Lane v. Wilson*, 307 U.S. 268 at 275 ( ), so it has disapproved "the ghost of past malapportionment," *Burns*, supra, at ——. Likewise, when a minority group is invidiously disadvantaged by the concomitance of poverty, past and continuing discrimination, a restrictive electoral system, and a peculiar districting scheme," which gives it "less opportunity" to participate successfully, the Court will void such an apportionment scheme. *Cf. Hadley*, supra, at 57. See generally *Gaston v. United States*, 395 U.S. 285 (1969). It must be recognized that the right to vote may be abridged as easily by making its exercise excessively difficult as by prohibiting its exercise entirely. The Constitution forbids "sophisticated as well as single-

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"The overlay of a designated, but not geographically based, place system, which it is generally conceded enables politically active majorities to gang up on politically inactive minorities by eliminating the single-shot voting possible in the usual at large system—on a majority run-off requirement in the multi-member districts. See Speech by Preston W. Edsall,
, and Roy E. Young, *The Place System in Texas Elections.*

minded modes of discrimination." *Gomillion v. Lightfoot*, 364 U.S. 339 at 342 (1960). *Cf. Terry v. Adams*, 345 U.S. 461 (1953).

The principal distinctions between the Dallas minority, the blacks, and the San Antonio minority, the Mexican-Americans, are in two areas: first, the Mexican-Americans of San Antonio are in plurality in terms of their numerical percentage of the population of Bexar County, and second, the Mexican-Americans of San Antonio register and vote at very low rates, approximately 30%. It has been argued that the facts of numerical majority and of low voting participation indicates that the Mexican-Americans are not entitled to constitutional relief, since they "could" do very well in multi-member district elections in Bexar County. We reject those arguments.

Whitcomb speaks of a "minority," and we see no need to limit that to numerical minority. In fact, "minority" has traditionally been used in Civil Rights cases to denote a racial or social group of people, not a numerical percentage. Therefore, the Mexican-Americans of San Antonio are not read out of *Whitcomb* simply because their numbers may predominate over those of the Anglos. They still fall within the rationales of *Whitcomb*.

In addition, we draw very different conclusions than does the State from the fact that the Mexican-Americans register and vote in such low numbers. The State uses those facts to argue that the Mexican-Americans need political organization, not redistricting. We use those facts in the context of the other facts regarding the Mexican-Americans of San Antonio that we have previously discussed. And we conclude that the *reason* that the voter participation among the Mexican-Americans is so low is that their voting patterns were estab-

lished under precisely the same sort of discriminatory State actions that we have already found both relevant and condemnatory with regard to the Dallas Blacks. The fact that some of those laws have been changed within the past few years or months does not answer or offset the fact that the voting patterns remain firm. Because they were denied access to the political processes through years of discrimination, the Mexican-Americans do not now register and vote in overwhelming numbers. We are not at all surprised at that result. Nor do we feel constitutionally able to respond, as does the State, that the Mexican-Americans should be left to the tool of political organization in order to remedy their electoral situation in San Antonio and to exert more influence in multi-member elections in Bexar County. The voting patterns and the language difficulties, which we have already concluded were caused or abetted by State action, have made the process of organization extremely onerous, if not illusive.

There is no constitutional requirement that the Mexican-Americans go through the decades of organization and heartache that preceded the black Civil Rights movement and the resulting increase in black participation in the political processes. Quite the contrary, while State action unquestionably caused or contributed substantially to the low voter participation of the Mexican-Americans in San Antonio, the remedying of State action is both appropriate and constitutionally compelled. The fact that the State action at issue here, the apportionment of Bexar County, did not "cause" the low voter participation is questionable argument and an irrelevant one. Because of the continued and continuing discriminations against Mexican-Americans in Bexar County, they are effectively removed from the political processes of Bexar in violation of all the

Whitcomb standards, whatever their absolute numbers may total in that County.

Single-member representation in Bexar is as constitutionally compelled as is single-member representation in Dallas, on the basis of *Whitcomb*, although for somewhat different rationale and under somewhat different circumstances. Single-member districts in San Antonio will obviously be of benefit in remedying the effects of past and present discrimination against Mexican-Americans. If the voting percentages remain at 30% in the Mexican-American areas, for a short while after single-member districting, at least the Mexican-Americans will have representation of their interests in the Texas House. Moreover, we are also of the opinion that the opportunity to participate effectively in the political process will greatly encourage the voting percentages in the Mexican-American areas of Bexar.

Again, we are not to be understood as saying, and indeed specifically disavow, any intention of implying that

> "any group with distinctive interests must be represented in legislative halls if it is numerous enough to command at least one seat and represent a majority living in an area sufficiently compact to constitute a single member district." *Whitcomb*, supra, at ——.

No political, racial or other interest group has any constiutional right to be successful in its political activities. However, a State may not design a system that deprives such groups of a reasonable chance to be successful.

V.

The San Antonio Republicans assert that the State Senate Districts in Bexar County have been unlaw-

fully gerrymandered. Specifically, they argue that the legislative redistricting board designed Senatorial Districts 19, 21, and 26 for the purpose of minimizing the Republicans' political clout. We are unable to agree with this contention.

In Bexar County the three state senatorial posts are presently filled by two Anglos and one Mexican-American. Under the board's redistricting plan, Senatorial District 21 combines approximately 110,000 people from the northern portion of Bexar County with approximately 250,000 people from rural counties north, west, and south of Bexar County. The State demonstrated that a division was necessary in order to achieve numerical equality in the various senatorial districts. While the San Antonio Republicans do not challenge the State's quest for population equality among the various senatorial districts, they do object to the method employed by the State in adhering to the one-man, one-vote principle. Essentially, the Republicans in San Antonio claim that those 110,000 bodies combined with other South Texas counties in Senatorial District 21 should have been extricated from the southern portion of Bexar County.

This Court is unable to conclude that there is some constitutional preference for a district shaped like a horseshoe as opposed to one shaped like a doughnut. Indeed, there seems little to dictate a choice between what was done and what could have been done concerning the senatorial districts in Bexar County. The State has shown that its choice is relatively consistent with traditional redistricting criteria. All three of the senatorial districts representing at least a portion of Bexar County follow the principles of contiguity. In addition, these three districts are relatively compact, and the fact that another redistricting plan might have

created districts which were arguably more compact is not sufficient to justify judicial denunciation of the existing plan. Accordingly, we conclude that the San Antonio Republicans have failed to prove an unlawful gerrymander with respect to the senatorial districts in Bexar County, Texas.

VI.

The plaintiff in Harris County contends that the state redistricting board has districted Harris County's senatorial seats in such a way that the effect is to minimize or dilute Harris County's black vote. In addition, the Harris County plaintiff alleges that the intent of the redistricting board was to dilute the black vote.

Of course, whenever a single-member districting scheme is employed in a metropolitan area, it is essential that some divisions be made. The Supreme Court cases are unclear concerning the question of whether it is the *effect* of a redistricting scheme or the *intent* of the redistricting body that controls the Fourteenth Amendment inquiries of a judicial tribunal. *See generally, Palmer v. Thompson*, 1971, —U.S.—, 91 S.Ct. —, 29 L.Ed. 2d 438. We feel compelled to conclude from *Whitcomb* that effect—that is, the established effect of a lesser impact on black voters under one scheme as contrasted with another—is not sufficient alone to invalidate a districting scheme under the Fourteenth Amendment. And intent—if by intent one means only an established, specific purpose—is usually very difficult to demonstrate; racial motives are rarely stated openly nowadays. Of course, a court may draw differences in *degree* between the effects of a districting scheme, or a court may *infer* intent from particular effects within a *congeries* of historical circumstance.

But in such a situation whether a court uses "effect" or "intent" as the basis for judicial inquiry, we believe that a court must find, before concluding that a single-member districting scheme violates the Fourteenth Amendment, that the effects are indeed substantial, if not egregious. From the record presented to this Court a majority is simply unable to conclude that even the effect of the challenged redistricting scheme in Harris County will be to dilute the votes of the black minority. The racial composition of the various districts in Houston has changed very little, if at all. Indeed, State Senator Barbara Jordan, a black, testified that she would not concede that she could not win from the new senatorial district because she believed that she could appeal to a broad base of the voters. In addition, to remedy the alleged racial effect of the board's plan, we have been offered one plan that openly "gerrymanders" (in the historical sense of that word) Harris County so as to maximize black voting clout, a proposal strictly forbidden by the Fourteenth Amendment, *see Wright v. Rockefeller*, 1964, 376 U.S. 52, 84 S.Ct. 603, 11 L.Ed.2d 512, (Douglas, J., dissenting), and another plan which, if acceptable in other respects, would increase the black percentage in one district by only five percentage points.

Furthermore, we cannot read invidious racial intent by the legislative redistricting board into the fact that the board may have taken the racial composition of the various districts into consideration in drawing its plan. It appears to a majority of this Court that, in order *not* to dilute the votes of a racial minority as required by the Fourteenth Amendment, *see Whitcomb v. Chavis, supra*; *Fortson v. Dorsey, supra*; *Burns v. Richardson, supra.* the body charged with drawing district lines is within its rights to have before it information on racial composition.

Absent preponderating evidence, this Court can only conclude that the plaintiff in the Harris County case has failed to show that Harris County's single-member senatorial districts either operate or were designed to dilute the vote of that county's black minority.

VII.

This Court concludes that the apportionment plan for the State of Texas is unconstitutional as unjustifiably remote from the ideal of "one man, one vote," and that the multi-member districting schemes for the House of Representatives as they relate specifically to Dallas and to Bexar Counties are unconstitutional in that they dilute the votes of racial minorities. The panel does not feel compelled to reach the question of the alleged dilution of "political" elements in the apportionment of the House of Representatives as raised by the Republicans of Dallas and Bexar Counties on the ground that the interests of and the relief asked by the Republicans are automatically subsumed in the relief granted to Dallas and Bexar Counties in behalf of the black and Mexican-American minorities. The Court is unanimously of the opinion that the Senate districting scheme for Bexar County does not unconstitutionally dilute the votes of any political faction or party. The majority is unable to conclude that the black votes of Harris County have been unconstitutionally diluted.

The Supreme Court and the Federal Judiciary have entered the field of legislative apportionment only with hesitation and only to correct constitutional defects. Apportionment remains essentially a legislative function, and this Court feels neither required nor inclined to assume that legislative duty at this point. Although we conclude that the legislative redistricting plan fashioned by the five-member redistricting board is consti-

tutionally infirm, our commitment to federalism is such that we remit to the State legislative processes the opportunity to perform its functions of redistricting. Therefore, the matter of redistricting the State in accordance with the constitutional guidelines explicated in this opinion is rendered for legislative consideration and resolution. See *Reynolds v. Sims*, supra." But while it is appropriate for the Federal Courts to enter the apportionment area with restraint, they cannot appropriately maintain a Job-like unquestioning and unswerving patience with the legislative processes in the realm of the Federal Constitution." The next regular session of the Texas Legislature will convene in January of 1973. If the legislature has not acted pursuant to constitutional guidelines by July 1, 1973, this Court will feel compelled by the Fourteenth Amendment and the evolving law of apportionment to redistrict the State itself. See *Sims v. Amos*, supra.

It is established law in this area that a Court may act either temporarily or permanently and that it may act to remedy only specific sections of a State apportionment plan. See *Reynolds v. Sims*, supra; *Whitcomb v. Chavis*, supra. In particular, we conclude that this Court should act immediately on those areas of a State apportionment plan which it finds to be egregiously out of line with constitutional requirements. See *Wells v. Rockefeller*, supra. This requirement of immediate

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"We should note that this Court has been offered a substitute plan by one of the plaintiffs which results in a total deviation for the State of less than 3.5%, while cutting only 28 county lines. Although that plan may be defective in other ways, which we have neither studied conclusively nor do we reach in this opinion, the proposed plan clearly indicates that a much closer proximation of *Reynolds* and *Swann* can be achieved.

"See *Kilgarlin v. Hill*, supra; *Smith v. Craddick*, supra; *Mauzy v. Redistricting Board*, supra.

action would arise primarily in the context of racial inequalities or hindrances. See *Connor v. Johnson*, supra; *Sims v. Amos*, supra.

This Court has concluded that particularly compelling constitutional infirmities have presented themselves in Dallas and Bexar Counties, founded in the context of racial inequalities and hindrances. Because the use of multi-member districting in Dallas and Bexar is the basis of our holdings of unconstitutionality and because a Federal Court engaged itself in the apportionment process must give preference to single-member districting, *Connor v. Johnson*, supra, this Court hereby adopts the single-member districting plans that are attached to this opinion as Exhibits A and B. These plans were adopted from among those presented to the Court by six different sources (with some adjustments by the Court) solely on the basis of the least population variance.[*] We are unanimously of the opinion that they fulfill the constitutional requirements of *Whitcomb* and of *Reynolds*.

This Court is also of the opinion that one of the equities of transition from multi-member districts in Dallas and Bexar Counties to single-member districts requires that, for the election to the Texas House of Representatives to be held during the year of 1972, no candidate shall be required to reside in the single-member district he seeks to represent; enforcement of and the requirement of the Texas Constitution so stating will be enjoined for the year of 1972. Such candidates must, however, reside in Dallas or Bexar Counties.

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[*]The total deviation of Exhibit A (Dallas) is 1.4% (1048); the total deviation of Exhibit B (Bexar) is 1.9% (1402).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CIVIL ACTION NO. A-71-CA-142
CURTIS GRAVES, ET AL.
vs.
BEN BARNES, ET AL.

CIVIL ACTION NO. A-71-CA-143
DIANA REGESTER, ET AL.
vs.
BOB BULLOCK, ET AL.

CIVIL ACTION NO. A-71-CA-144
JOHNNY MARIOTT, ET AL.
vs.
PRESTON SMITH, ET AL.

CIVIL ACTION NO. A-71-CA-145
VAN HENRY ARCHER, JR.,
vs.
PRESTON SMITH, ET AL.

ORDER

[Filed, January 28, 1972]

Pursuant to the opinion entered this day in the above styled and numbered cause, the following mandate shall issue forthwith.

It is hereby ORDERED that unless the Legislature of the State of Texas on or before July 1, 1973, has adopted a plan to reapportion the legislative districts within the State in accordance with the constitutional guidelines set out in this opinion this Court will so reapportion the State of Texas.

It is further ORDERED that the counties of Dallas and Bexar are hereby reapportioned into single-member representative districts in conformance with attached Exhibits A and B, respectively.

It is further ORDERED that Article 3, Section 7 of the Constitution of the State of Texas, as pertains to the one-year district residence requirement for State Representatives is hereby suspended for those candidates for the Texas House of Representatives from Dallas and Bexar Counties in the 1972 primary, general and special elections. However, said Article 3, Section 7 shall remain in full force and effect as concerns those candidates for State Representative seeking election in Representative District 45, which has not been specifically reapportioned under this Order.

It is further ORDERED that the Secretary of State of the State of Texas adopt and implement any and all procedures necessary to properly effectuate the orders of this Court in conformance with this Opinion, the Texas Election Code, and the Constitution of the State of Texas.

The Court further ORDERS that any and all relief requested by the parties and not specially granted in this Order is hereby in all things DENIED.

It is further ORDERED that this judgment be considered, for purposes of appeal and otherwise, as a final judgment in this case, and that no stay of proceedings pending appeal will be granted by this Court.

IRVING L. GOLDBERG
Circuit Judge

WILLIAM WAYNE JUSTICE
District Judge

JOHN H. WOOD, JR.
District Judge

EXHIBIT A

DISTRICT 33A

PART OF DALLAS COUNTY:

Census Tract	Population
143 (Less Block 7 & 8)	16,923
144 (all except E.D. 69, 70, 82 and 82B)	8,090
145	7,142
146	6,353
147	7,157
148	3,366
149	2,564
150	5,424
151	7,681
152	8,995
TOTAL	73,695

DISTRICT 33B

PART OF DALLAS COUNTY:

Census Tract	Population
72 (Blocks 2 & 3 only)	2,702
97 (Blocks 3, 4 & 5 only)	4,470
99	3,236
136.01	1,649
137.01	4,561
137.02	7,303
137.03	6,797
137.04	52
137.05	39
138.01	284
138.02	9,623
139	8,439
140.01	4,283
140.02	314
141.01	1,735
141.02	391
141.03	44
141.04	7,890
142	3,873
143 (Blocks 7 & 8 only)	6,027
TOTAL	73,712

EXHIBIT A

DISTRICT 33C

PART OF DALLAS COUNTY:

Census Tract	Population
4.01	2,893
4.02	5,647
4.03	6,509
5	4,582
16	6,007
17.01	316
17.02	3,103
18	2,657
19	1,447
21	200
22.01	1,669
22.02	2,265
23	2,553
25 (Blocks 3 & 4 only)	2,304
28	2,523
29	3,778
30	649
31.01	2,465
31.02	56
32.01	377
33	3,277
36 (Block 1 only)	710
71.02	7,662
100	3,665
102	6,511
TOTAL	78,825

DISTRICT 33D

PART OF DALLAS COUNTY:

Census Tract	Population
181.01	5,624
181.02	2,566
181.03	5,418
182	12,170
183	7,842
184	7,635
186	4,305
187	4,982
188	5,244
189	3,810
190.05 (less E.D. 220)	14,257
TOTAL	78,853

EXHIBIT A

DISTRICT 33E

PART OF DALLAS COUNTY:

Census Tract	Population
2.01 (Block 1)	1,050
3	3,616
6.01	5,727
6.02	7,897
10	4,799
71.01	2,339
73.01	2,462
73.02	4,049
75.02	469
79.01	7,769
193.01	2,549
193.02	6,667
194	3,753
195.01	6,194
195.02	4,335
196	2,597
197	2,716
198	4,820
TOTAL	73,808

DISTRICT 33F

PART OF DALLAS COUNTY:

Census Tract	Population
43	3,785
44	6,519
45	7,263
46	2,815
52	3,820
53	5,388
64	5,979
65	6,345
67	3,207
68	4,475
69	1,943
101	11,332
103	4,754
104	2,695
199	3,515
TOTAL	73,835

EXHIBIT A

DISTRICT 33G

PART OF DALLAS COUNTY:

Census Tract	Population
51 (less Block 1)	2,400
56	5,095
57	7,381
59.01	8,261
59.02	4,326
60.01	4,618
60.02	2,517
61	4,788
62	4,588
63.01	4,568
63.02	2,230
87.02 (Blocks 2, 3, 5, 6 & 7)	7,855
108	15,025
TOTAL	73,652

DISTRICT 33H

PART OF DALLAS COUNTY:

Census Tract	Population
116 (less Blocks 1 & 2)	6,046
165.02	6,632
165.03	6,605
165.04	590
165.05	2,274
166.01	3,400
166.02	4,189
166.03	3,241
166.04	538
167.02	5,819
168	6,107
169.01	3,189
169.02	1,876
169.03	3,035
169.04	555
170	7,957
171	4,412
172	3,347
173.01	3,894
TOTAL	73,706

EXHIBIT A

DISTRICT 33I

PART OF DALLAS COUNTY:

Census Tract	Population
120	2,536
121	242
126	5,374
127	8,366
173.02	2,686
174	3,923
175	2,600
176.01	6,615
176.02	2,559
177	10,056
178.01	5,265
178.02	8,436
179	5,595
180	8,446
181.04	901
TOTAL	73,600

DISTRICT 33J

PART OF DALLAS COUNTY:

Census Tract	Population
105	3,899
106	5,931
107	6,485
144 (E.D. 69, 70, 82 & 82B)	2,559
153.01	2,180
153.02	4,649
154	7,807
155	3,455
156	4,494
157	3,304
158	2,617
159	2,496
160	6,215
161	2,953
162	6,543
163	1,750
164	4,393
165.01	2,092
TOTAL	73,822

EXHIBIT A

DISTRICT 33K

PART OF DALLAS COUNTY

Census Tract	Population
7.01	3,363
7.02	2,743
8	4,787
9	3,123
11.01	4,132
11.02	2,401
12	4,727
13.01	1,956
13.02	5,092
14	3,803
15.01	6,863
15.02	3,925
24	2,440
25 (less Blocks 3 & 4)	2,433
26	1,798
27.01	7,267
27.02	4,914
38 (less Block 5)	3,385
39.01	4,583
TOTAL	73,735

DISTRICT 33L

PART OF DALLAS COUNTY:

Census Tract	Population
84	6,263
85	3,299
90.01	1,186
90.02	4,250
91.01	5,410
91.02	8,818
92.01	5,429
92.02	4,747
93.01	3,671
93.02	7,429
115	6,782
116 (Blocks 1 & 2)	1,922
117	7,818
118	3,536
119	3,123
TOTAL	73,683

EXHIBIT A

DISTRICT 33M

PART OF DALLAS COUNTY:

Census Tract	Population
1	3,795
2.01 (less Block 1)	2,085
2.02	3,908
79.02 (less Block 6)	5,078
80	5,920
81	6,979
82	5,064
83	1,650
122.01	12,213
122.02	4,249
123	7,048
124	6,860
125	8,956
TOTAL	73,805

DISTRICT 33N

PART OF DALLAS COUNTY:

Census Tract	Population
36 (except Block 1)	1,124
37	5,855
38 (Block Group 5 only)	1,490
39.02	3,756
40	3,794
86	4,121
87.01	4,979
87.02 (all except Blocks 2,3,5,6 & 7)	5,619
109	1,327
110	10,217
111.01	1,933
111.02	11,667
112	3,571
113	4,844
114.01	4,507
114.02	1,740
167.01	3,237
TOTAL	73,781

EXHIBIT A

DISTRICT 33O

PART OF DALLAS COUNTY:

Census Tract		Population
20		6,306
32.02		209
33		1,854
34		6,950
41		3,585
42		4,638
47		3,134
48		3,718
49		7,597
50		3,035
51	(Block 1 only)	1,232
54		7,076
55		4,048
88		12,279
89		8,073
	TOTAL	73,734

DISTRICT 33P

PART OF DALLAS COUNTY:

Census Tract		Population
136.02		7,639
136.03	(Less Block 2)	8,332
190.01		937
190.02		4,085
190.04		4,295
190.05	(E.D. 220 only)	369
190.06		216
190.07		895
191		6,106
192.01		4,718
192.02		5,058
192.03		5,713
192.04		6,482
192.05		3,065
192.06		6,241
192.07		9,555
	TOTAL	73,706

EXHIBIT A

DISTRICT 33Q

PART OF DALLAS COUNTY:

Census Tract	Population
77	5,795
78.01	894
78.02	6,633
78.03	7,107
79.02 (Block 6 only)	824
128	9,238
129	5,330
130.01	13,877
130.02	9,724
131	7,755
133	2,057
185.01	3,718
185.02	92
190.03	553
TOTAL	73,597

DISTRICT 33R

PART OF DALLAS COUNTY:

Census Tract	Population
72 (less Blocks 2 & 3)	2,101
74	1,697
75.01	739
76.01	2,302
76.02	812
76.03	842
76.04	3,693
94	7,036
95	2,492
96.01	12,178
96.02	8,696
96.03	4,756
96.04	2,205
97 (less Blocks 3, 4, & 5)	4,237
98	9,262
132	2,217
134.01	1,165
134.02	1,504
135	2,898
136.03 (Block 2 only)	2,940
TOTAL	73,772

LEGEND

Exhibit A District No.	Map District No.
33A	1
33B	2
33C	3
33D	4
33E	5
33F	6
33G	7
33H	8
33I	9
33J	10
33K	11
33L	12
33M	13
33N	14
33O	15
33P	16
33Q	17
33R	18

EXHIBIT B

DISTRICT 57A

PART OF BEXAR COUNTY:

Census Tract	Population
1511	8,325
1521	1,513
1608	4
1609	8,419
1610	3,799
1611	4,914
1613	1,393
1614	22,867
1615	10,475
1617	1,042
1618	4,830
1619	3,439
1620	4,323
TOTAL	75,343

DISTRICT 57B

PART OF BEXAR COUNTY:

Census Tract	Population
1411	7,524
1415	1,219
1416	256
1505	11,251
1506	5,515
1507	6,116
1508	1,428
1509	6,314
1510	3,985
1512	2,622
1513	6,446
1514	4,276
1515	2,605
1516	6,663
1517	6,837
1518	1,573
1520	353
1612	568
TOTAL	75,551

EXHIBIT B

DISTRICT 57C

PART OF BEXAR COUNTY:

Census Tract	Population
1205	14,257
1213	3,534
1214	5,316
1215	655
1216	5,938
1217	5,054
1310	5,376
1312	2,384
1313	5,955
1314	505
1315	3,581
1316	2,475
1317	5,329
1318	3,078
1413	2,158
1417	1,362
1418	1,884
1419	1,717
1519	3,191
1522	1,992
TOTAL	75,741

DISTRICT 57D

PART OF BEXAR COUNTY:

Census Tract	Population
1104	2,674
1308	3,999
1311	4,112
1401	2,237
1402	3,739
1403	3,143
1404	3,586
1405	3,682
1406	2,337
1407	3,904
1408	5,459
1409	1,941
1410	2,584
1412	6,925
1414	10,097
1501	6,959
1502	1,696
1503	5,674
TOTAL	74,753

EXHIBIT B

DISTRICT 57E

PART OF BEXAR COUNTY:

Census Tract	Population
1101	3,275
1102	1,816
1103	6,290
1109	1,332
1110	3,586
1201	10,561
1202	5,523
1301	5,508
1302	2,181
1304	8,572
1305	7,539
1306	5,846
1307	3,490
1308	5,643
1309	3,695
TOTAL	74,857

DISTRICT 57F

PART OF BEXAR COUNTY:

Census Tract	Population
1203	6,933
1204	5,225
1206	6,023
1207	8,017
1208	7,592
1209	4,970
1210	5,150
1211	2,871
1212	6,755
1218	1,108
1219	52
1908	2,250
1909	10,703
1913	3,588
1914	1,119
1917	3,481
TOTAL	75,837

EXHIBIT B

DISTRICT 57G

PART OF BEXAR COUNTY:

Census Tract	Population
1802	8,245
1809	15,137
1810	3,502
1906	10,554
1907	3,903
1910	17,287
1911	5,311
1912	10,534
TOTAL	74,473

DISTRICT 57H

PART OF BEXAR COUNTY:

Census Tract	Population
1616	4,339
1714	4,558
1717	4,944
1718	11,929
1719	3,921
1805	5,621
1806	8,933
1807	5,621
1808	2,504
1811	4,507
1812	2,390
1813	3,197
1814	395
1815	4,366
1816	2,996
1817	1,239
1818	2,246
1819	858
1915	1,311
TOTAL	75,875

EXHIBIT B

DISTRICT 57I

PART OF BEXAR COUNTY:

Census Tract	Population
1607	8,779
1706	5,200
1707	6,881
1708	1,749
1709	8,354
1710	8,001
1711	4,898
1712	4,375
1713	8,236
1715	8,738
1716	3,158
1803	4,255
1804	2,189
TOTAL	74,813

DISTRICT 57J

PART OF BEXAR COUNTY:

Census Tract	Population
1105	5,431
1504	5,396
1601	9,450
1602	3,375
1603	5,881
1604	5,368
1605	11,516
1606	7,083
1702	10,850
1703	10,199
TOTAL	74,549

EXHIBIT B

DISTRICT 57K

PART OF BEXAR COUNTY:

Census Tract	Population
1106	7,002
1107	2,485
1108	3,520
1701	10,133
1704	12,481
1705	5,401
1801	8,261
1901	4,437
1902	6,100
1903	516
1904	4,143
1905	10,432
TOTAL	74,911

Exhibit-A.

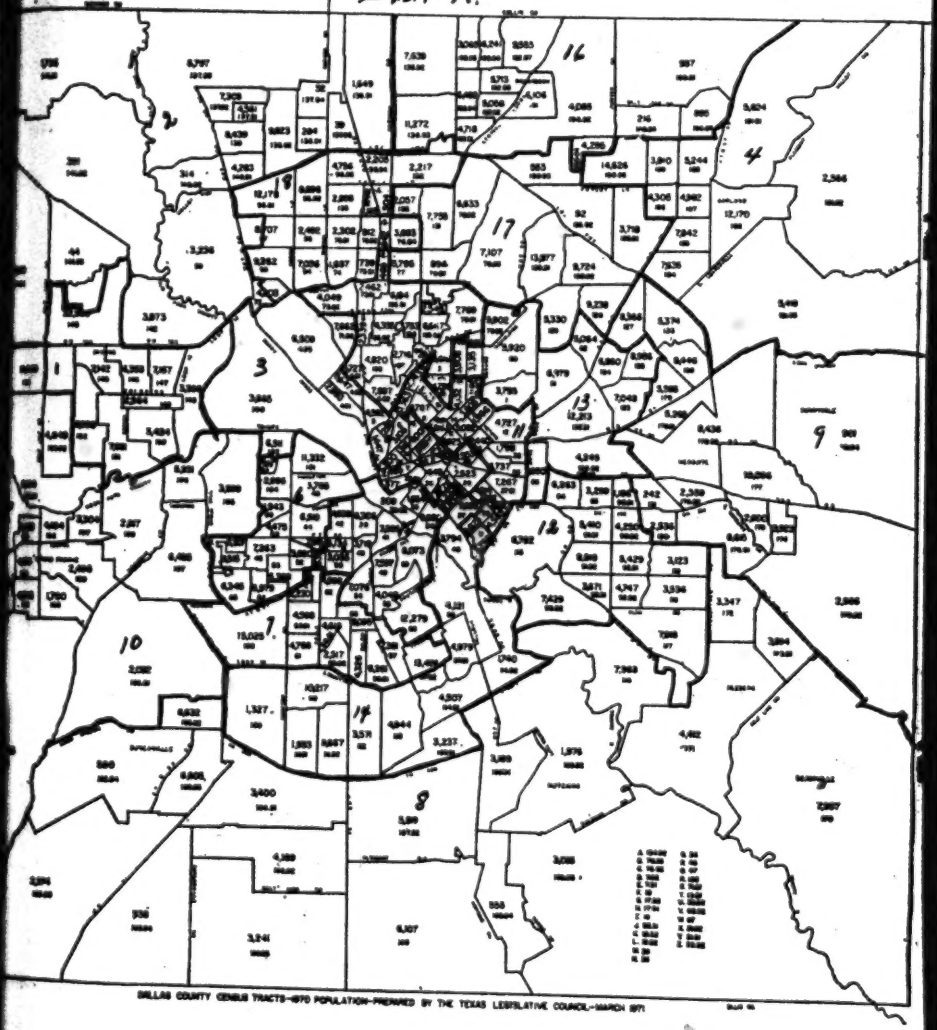
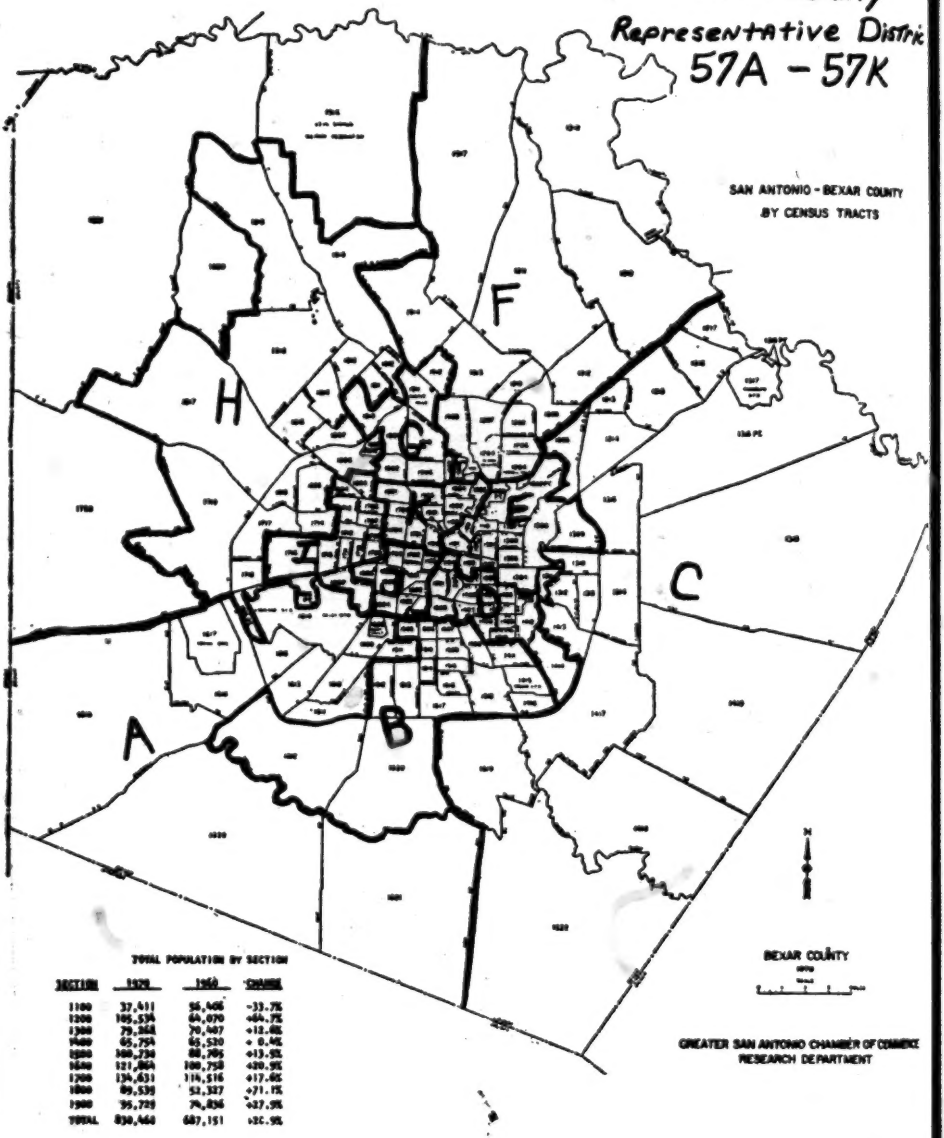

DALLAS COUNTY CENSUS TRACTS-1970 POPULATION-PREPARED BY THE TEXAS LEGISLATIVE COUNCIL-MARCH 1971

Exhibit B

Bexar County
Representative Districts
57A - 57K



TOTAL POPULATION BY SECTION

SECTION	1929	1950	CHANGE
1100	37,411	25,005	-33.7%
1200	105,534	64,070	-44.7%
1300	79,288	70,907	+12.8%
1400	85,759	85,530	- 0.4%
1500	108,734	88,395	+13.5%
1600	121,864	100,758	+20.9%
1700	134,631	114,515	+17.6%
1800	99,539	52,337	+71.1%
1900	95,729	74,836	+27.9%
TOTAL	830,460	687,151	+20.9%

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CIVIL ACTION NO. A-71-CA-142
CURTIS GRAVES, ET AL.
vs.
BEN BARNES, ET AL.

CIVIL ACTION NO. A-71-CA-143
DIANA REGESTER, ET AL.
vs.
BOB BULLOCK, ET AL.

CIVIL ACTION NO. A-71-CA-144
JOHNNY MARIOTT, ET AL.
vs.
PRESTON SMITH, ET AL.

CIVIL ACTION NO. A-71-CA-145
VAN HENRY ARCHER, JR.,
vs.
PRESTON SMITH, ET AL.

JUSTICE, District Judge, concurring in part and dissenting in part.

I concur in the court's opinion in all respects, with the exception of its refusal to grant relief in the action brought in the Houston Division of the Southern District of Texas by certain black voters of Harris County, challenging the Reapportionment Plan of the Texas Senate as that plan applies to Harris County. The plaintiffs contend: (1) That the State Senatorial Districts in Harris County, created by the Legislative Redistricting Board in 1971, were intentionally de-

signed by the Board to cancel, dilute or minimize the voting strength of blacks in Harris County; or, alternatively, (2) that the effect of the creation of such new State Senatorial Districts by the Board was to cancel, dilute or minimize the voting strength of such blacks.

Harris County is a metropolitan county dominated by the City of Houston. Two political experts, Professor Richard W. Murray of the University of Houston and Mr. Searcy Bracewell, a practicing attorney and registered lobbyist, testified to the political history and voting patterns of Harris County within recent years. The testimony of the experts coincided closely in many respects. Their testimony establishes that the dominant political party in Harris County is the Democratic Party. However, the western part of Houston and Harris County is a Republican stronghold. The Democratic Party in Harris County has a well defined cleavage between liberals and conservatives. The conservative faction of the Democratic Party controlled the single Harris County seat in the Texas Senate until 1966. However, since that date, the situation has changed to the extent that, in the present five-member delegation, there are four liberal Democrats and a Republican.

The evidence shows that the inner city of Houston, defined as the original fifty census tracts of the 1940 census, has a population of 431,000. Most of the residents of the inner city are black, but substantial numbers of Mexican-Americans and poor whites also reside there. Black voters in this area favor the Democratic Party overwhelmingly and support liberal Democrats to the same extent. Past voting patterns in the inner city demonstrate that, in legislative races, economic issues are paramount in the voters' minds, and that blacks and blue-collar voters ally themselves to elect

liberal legislators. Consequently, despite the fact that blacks constituted a minority in the four senatorial districts that included a part of the inner city under the 1965 redistricting plan, the political viewpoint of blacks—liberal Democrats—was held by all four Senators. Moreover, one of the Senators, the Honorable Barbara Jordan, is a black.

In the redistricting plan for Harris County adopted by the Legislative Redistricting Board in 1971, the core of the city was again divided among four senatorial districts. Professor Murray categorized the new districts, as follows:

District 11 contains a 37% black population. The prevailing white majority is predominately white collar middle class and upper middle class. However, the white voting pattern likely will be in favor of conservative Democrats and Republicans.

District 15 is 19% black. Included in its eastern part, near the heart of the city, are some of the city's poorest neighborhoods. In the western part of the district, on the other hand, are located neighborhoods of middle and upper class whites. Among these neighborhoods is the River Oaks area, one of the most affluent residential areas in the United States. The white voting pattern will probably favor conservative Democrats and Republicans, similar to the pattern of white voting in District 11.

Districts 6 and 7 contain 23% and 18% blacks, respectively. These districts reflect the same demographic and probable voting patterns as Districts 11 and 15. Districts 6 and 7, however, are somewhat more homogeneous than Districts 11 and 15.

District 13, containing only 4% black, is in a horseshoe shape, encompassing the eastern, western and

northern suburbs of Harris County. In its eastern part, the district is for the most part liberal Democratic. To the north and west, the district becomes increasingly conservative.

Mr. Bracewell's expertise in Harris County politics is derived from his experience as a member of the Texas House of Representatives for two years, of the State Senate from 1950 to 1959, and as a lobbyist for various corporate interests to the Texas Legislature since the latter date. At the last session of the Legislature, his clients included the Texas Association of Taxpayers, with a membership of more than 5,000, various utility companies, and other corporate interests. In representing his clients, Mr. Bracewell opposed bills to enact a corporate income tax and to establish a utilities commission. The bill to create a utilities commission did not come to the Senate floor for a vote. The income tax measure was defeated in the Senate by a vote of 16 to 15. Generally, liberal Senators favored enactment of the corporate income tax bill, whereas conservatives were opposed to it. Mr. Bracewell, therefore, possessed a legitimate interest in electing State Senators of a conservative philosophy from Harris County.

In his deposition, Mr. Bracewell described, with admirable candor, his analysis of the requirements to be met, if conservatives were to succeed in electing conservative Democrats to the State Senate: It would be necessary, first, to devise two districts with a sufficient number of Democrats to defeat Republicans in the General Election; and, second, provide for a contingent of conservative voters in each district large enough to elect conservative candidates over liberal candidates in the Democratic Primary Elections. To accomplish this purpose, Mr. Bracewell examined and studied election

returns, and decided that the requisites of the situation demanded that liberal (black) voting precincts in the inner city be rearranged.

As noted in the majority opinion of the court, the Texas Legislature failed to enact a bill to redistrict the Texas Senate at its last session, as required by the Texas Constitution. Under the provisions of the Constitution, the responsibility for preparing a redistricting plan then devolved upon the Legislative Redistricting Board, whose ex-officio members were the Honorable Crawford Martin, Attorney General, the Honorable Ben Barnes, Lieutenant Governor, the Honorable Gus Mutscher, Speaker of the House of Representatives, the Honorable Robert Armstrong, Land Commissioner, and the Honorable Robert S. Calvert, Comptroller.

The depositions of the members of the Legislative Redistricting Board indicate very clearly that Lieutenant Governor Barnes had effective control of the redistricting process. The Lieutenant Governor delegated the task of actually drawing the maps to Robert Spellings, his executive administrative assistant. Gregg Hooser, an employee of the Joint Committee for Legislative Redistricting, assisted Spellings in drawing the maps. Hooser, prior to beginning the actual drafting, had collected and had available to him massive amounts of data regarding racial compositions of census tracts, voting results covering several years, and socio-economic profiles of census tracts.

Mr. Bracewell testified that he consulted personally with all members of the Legislative Redistricting Board concerning State Senatorial Districts in Harris County except Commissioner Armstrong, with whom he discussed the situation by telephone. He consulted

several times with the Lieutenant Governor and Mr. Spellings. He also spoke with Mr. Hooser regarding redistricting about ten times. On one of these occasions, Mr. Bracewell brought with him a colored map whose origin is obscure, but which came to be called the "Houston Chamber of Commerce map." This map, setting out proposed State Senatorial Districts in Harris County, was presented by him to Mr. Spellings. Mr. Spellings testified that the map had "a breakdown behind it that showed or that gave the Black population in each of those Senatorial Districts."

Although literally hundreds of citizens contacted the members of the Legislative Redistricting Board as to redistricting, in person, by correspondence, and by telephone and telegraph, and many of this number presented their own plans, Mr. Bracewell's views clearly appear to have carried the day, insofar as Harris County's State Senatorial Districts are concerned. Professor Murray contended that the map finally adopted by the Legislative Redistricting Board bears such a marked similarity to the Houston Chamber of Commerce map that the statistical probability of the two plans being unconnected is virtually nil. A comparison of the two maps, particularly the serpentive course of the boundaries of the Senatorial Districts in the area of the inner city, will fully bear out Professor Murray's opinion.*

Mr. Bracewell testified that, under the Plan finally adopted by the Legislative Redistricting Board, two conservative Democrats "have a chance to be elected [as well as] two liberal democrats and possibly one

*A copy of the Legislative Redistricting Board's map appears in the Appendix as Exhibit I. A copy of the configurations of the proposed Harris County Senatorial Districts set out in the Houston Chamber of Commerce map appears in the Appendix as Exhibit II.

Republican." Professor Murray identified the two most conservatively oriented districts as Districts 7 and 15. It is worthy of note that two conservative Democrats, Representatives Lemmon and Ogg, who are "members of the team that has dominated the House of Representatives in recent years," and who have enjoyed the support of Mr. Bracewell in their past races, announced for the office of State Senator in District 7 and 15, respectively. Professor Murray further testifed:

> "[I]f one had to take a hundred plans that would be construed randomly . . ., I think this would be one of the two or three that would be most favorable to the interests of Mr. Ogg and Mr. Lemmon."

It was Professor Murray's further opinion that these districts, as drawn, are "very, very favorable to the election of Mr. Lee [sic] and Mr. Ogg."

Under the 1965 redistricting plan, District 11 originally contained approximately 47 or 48% blacks. Additionally, the white majority was made up primarily of lower middle class blue collar workers. As already mentioned, voting patterns indicate that this class of whites, where economic issues are at stake, will form coalitions with blacks to elect legislators, black or white. Such a coalition was, in fact, formed when Senator Barbara Jordan was elected to the Senate from District 11 in 1966. In contrast, the new District 11, although it contains 37% blacks—just as did the old District at the time of the 1970 census—, has blacks paired with middle class and upper middle class whites. Analysis of voter registration, voter turn-out, and precinct results reveal that the whites will have political strength far out of proportion to their 65% majority. Voting habits of the whites in District 11 also demonstrate that, in a State Senatorial contest, the likelihood of

forming a coalition with blacks is unlikely. Although Senator Jordan refused to concede that she could not be elected in the new Senatorial District 11, it was the opinion of Professor Murray that the four Senatorial districts are so arranged that no possibility exists for a black to be elected. Even Senator Jordan felt, however, that it would have been more difficult for her to prevail in the new district than the old.

The net effect of the Legislative Redistricting Board's action has been, again, to fragment the inner city black voters into four districts. But while in the past these blacks' political viewpoint was represented by four liberal Democrats, one of them Black, henceforth they are likely to be represented, in two of the inner city districts, by Senators belonging to a faction of the Democratic Party which has been, in the past, inimical to the interests of blacks.

It is settled beyond any doubt that a claim of racial gerrymandering presents a justiciable issue. *Gomillion v. Lightfoot,* 364 U.S. 339, 346 (1960). Subsequently, the Supreme Court in *Wright v. Rockefeller*, 376 U.S. 52 (1964), a case involving an attack on single member districts allegedly drawn on racial lines, apparently deemed the matter to be self-evident, for it did not even discuss justificiability before proceeding to the merits. In later cases, the lower courts have uniformly interpreted *Gomillion* and *Wright* as foreclosing the matter. *E.g., Smith v. Paris*, 257 F.Supp. 901, 904 (M.D. Ala. 1966); *Sims v. Baggett*, 247 F.Supp. 96, 104 (M.D. Ala. 1965).

Proceeding now to the merits of the racial gerrymandering claim, the first question becomes that of the proper constitutional standard to be applied. In the cases involving attacks on multimember districts, the Supreme Court has articulated the test as follows: A

multimember apportionment scheme is unconstitutional if, under the circumstances of a particular case, it operates to minimize or cancel out the voting strength of racial of political elements of the voting population. *Whitcomb v. Chavis*, 403 U.S. 124, 144 (1971); *Burns v. Richardson*, 384 U.S. 73, 88 (1966); *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965). I am persuaded that the multimember district problem and the gerrymandering problem are sub-species and manifestations of a more basic problem. By whatever name the more basic problem is called, it amounts to this: discriminatory action whereby the party or political power group which actually accomplishes the redistricting uses its power to transform its actual voter strength into the maximum of legislative seats and to convert the other party's actual voter strength into the minimum of legislative seats. Just as majority party bias or racial effect can be exaggerated by creating multimember districts large enough to submerge racial and political minorities, so the same result can be accomplished by conscious partisan line skewing. *See* Dixon, *The Court, The People, and "One Man, One Vote"*, Reapportionment in the Seventies 29-30 (Polsby ed. 1971); Dixon, *Democratic Representation*, 462 (1968). Thus, while I am not necessarily compelled by the internal logic of the similarity noted above, the fact that the *Fortson-Burns-Whitcomb* standard is used to solve one aspect of the basic problem is persuasive that the same standard should be used to solve another aspect of the same basic problem. Moreover, language in *Gomillion v. Lightfoot, supra*, at 345, 347 and in *Wright v. Rockefeller, supra*, at 56, supports the application of the *Fortson-Burns-Whitcomb* standard to the problem of racial gerrymanders.

Applying the *Fortson-Burns-Whitcomb* criteria to the evidence adduced to support the claim of racial

gerrymandering, I am of the opinion that the evidence more than amply supports a conclusion that the Senate districts in Harris County designedly operate to dilute, minimize, and cancel out the voting strength of blacks. Certainly, when the evidence of design is coupled with the manifest consequences and clear effect of the plan promulgated for Harris County, an inference of discriminatory design is compelled. *See Smith v. Paris, supra.* It should be pointed out that Commissioner Armstrong adamantly refused to sign the plan finally adopted by the Legislative Redistricting Board, because, in his opinion, the votes of the inner city blacks in Houston were diluted. He communicated his opinion to the Attorney General and the Lieutenant Governor, hence it can hardly be contended that the Board was unaware of the plan's inherent vice.

The spirit of the statement of a three-judge court in Alabama is applicable to the situation at hand: "The . . . plan adopted by the . . . Alabama Legislature was not conceived in a vacuum. If this court ignores the long history of racial discrimination in Alabama, it will prove that justice is both blind and deaf." *Sims v. Baggett, supra,* at 109. See *Connor v. Johnson,* 402 U.S. 690 (1971); *Sims v. Amos,* —F.Supp. —, (M.D. Ala 1972). Compare: *Smith v. Allwright,* 321 U.S. 649 (1943); *Terry v. Adams,* 345 U.S. 461 (1953); *U.S. v. Texas* 384 U.S. 155 (1966).

I am of the opinion that the Court would be justified in adopting Professor Murray's plan as an interim solution to the problem before it.** Although the Court requested both plaintiffs and defendants to submit plans at the conclusion of the case, Professor Murray's plan is the only plan on file. His plan in no way can-

**Professor Murray's plan is shown in the Appendix as Exhibit III.

cels out, dilutes, or minimizes the black vote. Although his plan would make it likely that a black Senator would be elected from District 15, as shown on his plan, that result would not be an egregious inflation of the black vote, given the proportion of blacks living in Harris County.

By this, I am not to be taken to mean that I believe blacks are necessarily entitled to proportional representation. The law appears to be to the contrary. *Whitcomb v. Chavis, supra* at 156. I approach the problem from a pragmatic standpoint, trying at the same time to stay out of the political thicket. *Reynolds v. Sims*, 377 U.S. 533, 587.

SIGNED and ENTERED this 27th day of January, 1972.

WM. WAYNE JUSTICE
United States District Judge
Eastern District of Texas

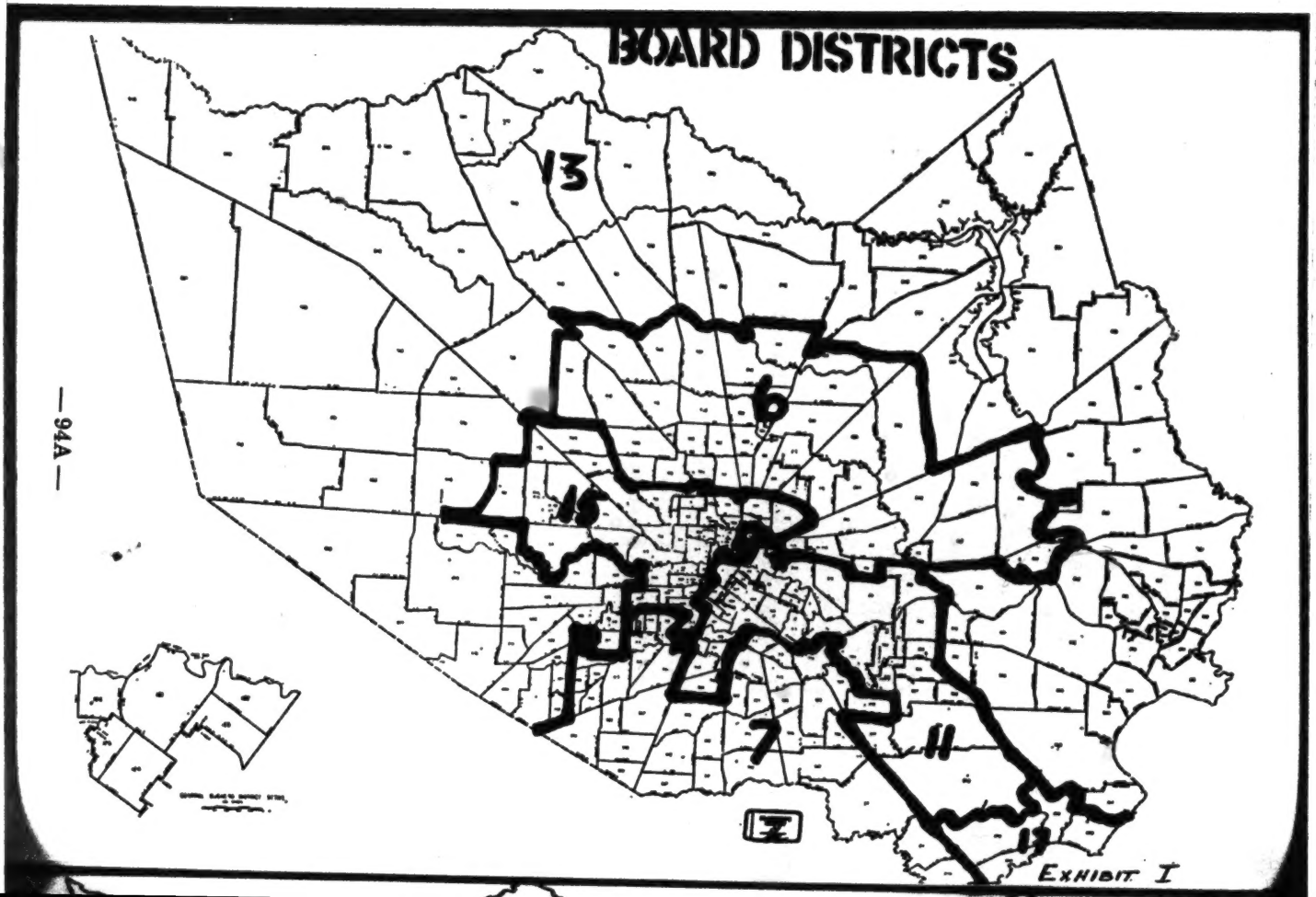

BOARD DISTRICTS
13
6
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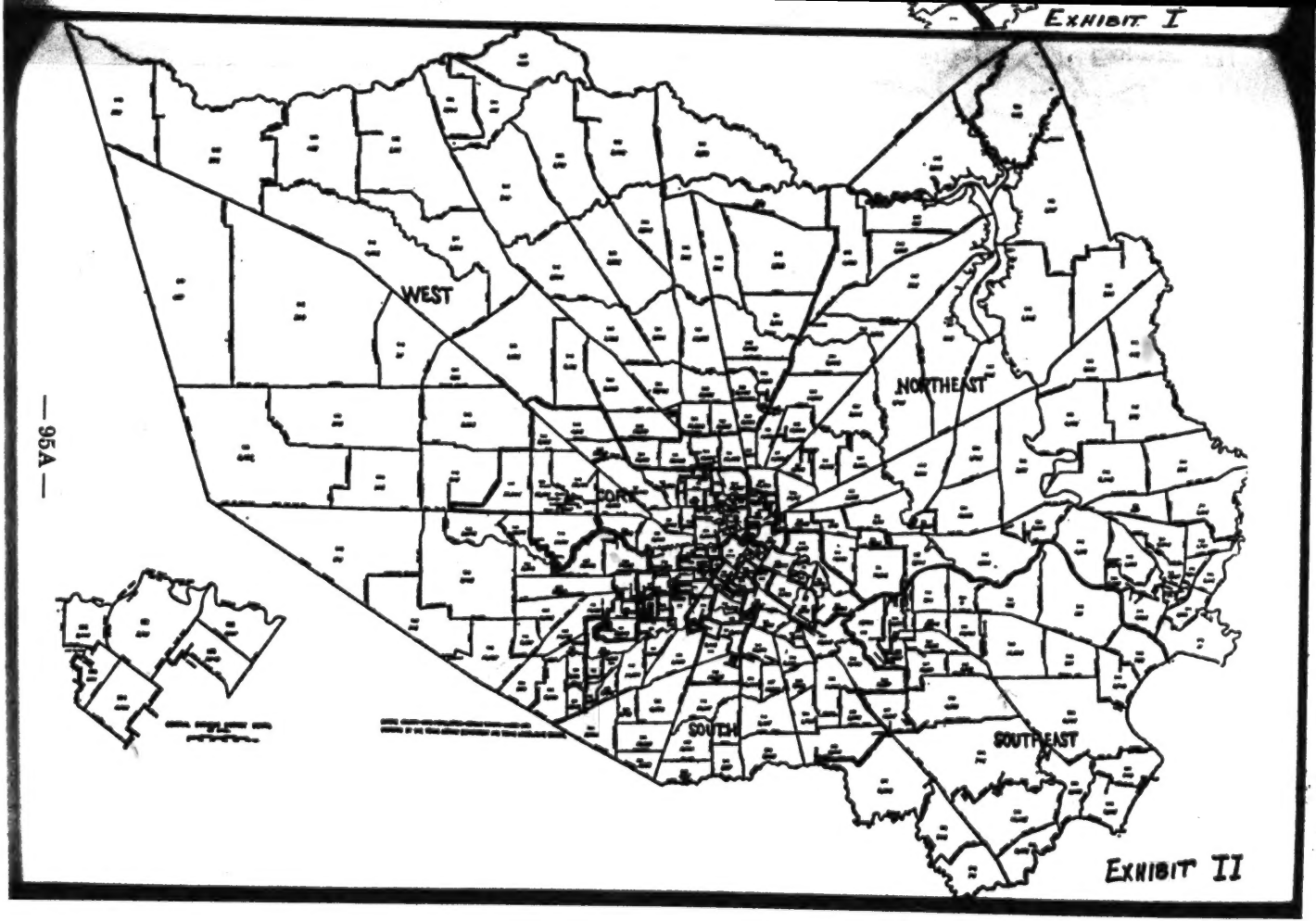
EXHIBIT I

EXHIBIT I



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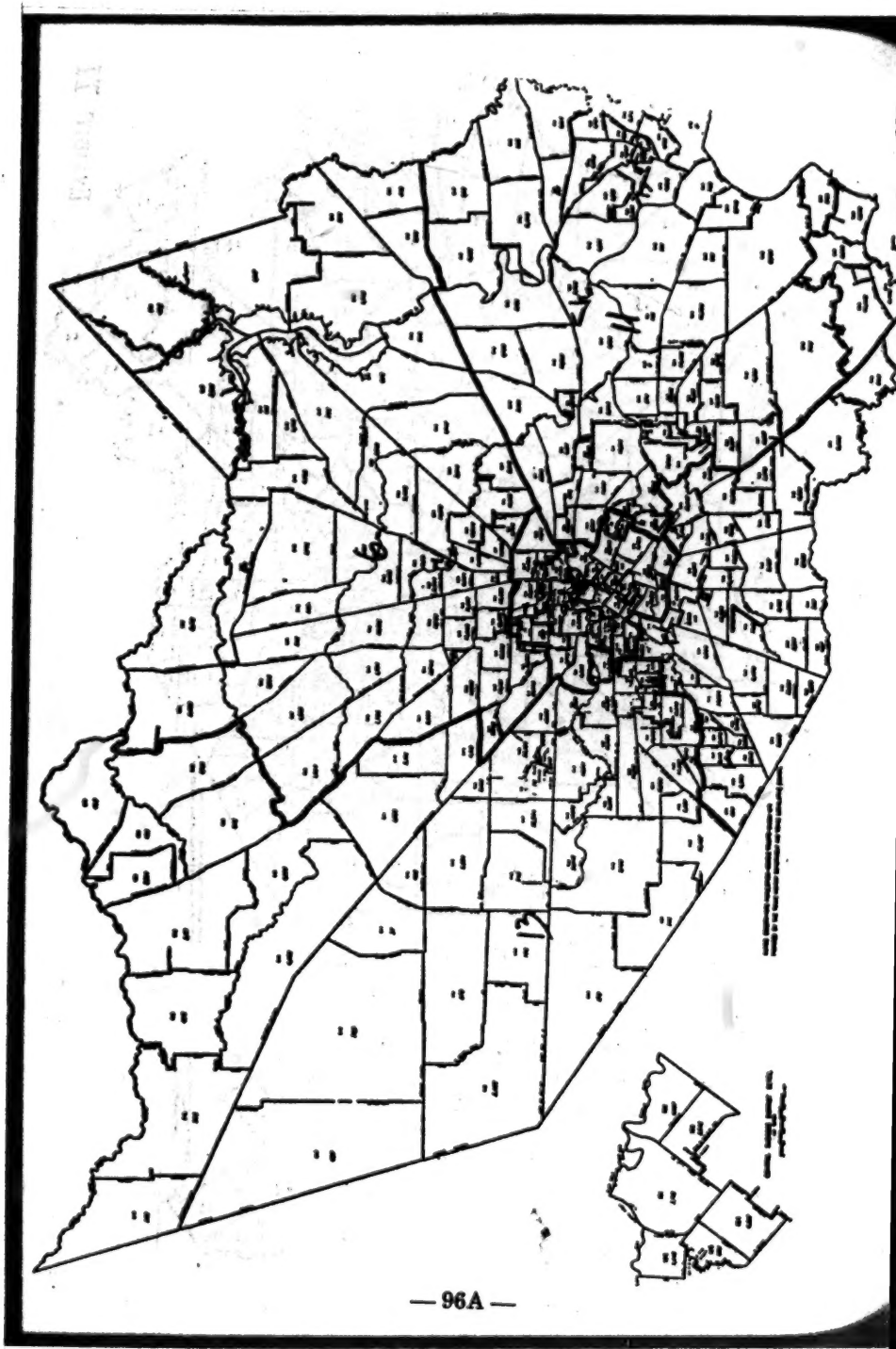

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CIVIL ACTION NO. A-71-CA-142
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CIVIL ACTION NO. A-71-CA-145
VAN HENRY ARCHER, JR.,
vs.
PRESTON SMITH, ET AL.

WOOD, District Judge, concurring in part and dissenting in part.

In concurring in part and dissenting in part with the Judgment, I make the following:

GENERAL OBSERVATIONS FOR CONSTITUTIONAL LAW APPLICABLE

Mr. M. R. Justice Harlan's separate Opinion in *Whitcomb v. Chavis* demonstrates the evident "malaise among the members of the Court" with prior decisions in the field of voter qualifications. He further observes

that the "suggestion implicit in the Court's Opinion that Appellees may ultimately prevail if they make their record in these and like respects should be recognized for what it is: a manifestation of frustration by a Court that has become trapped in the 'political thicket' and is looking for a way out." Mr. Justice Harlan continues:

> "This case is nothing short of a complete vindication of Mr. Justice Frankfurter's warning nine years ago 'of the mathematical quagmire (apart from divers judicially inappropriate and elusive determinants) into which this Court today catapults the lower courts of the country.' Baker v. Carr, 369 U.S. 186, 268 (1962) (dissenting opinion). With all respect, it also bears witness to the morass into which the Court has gotten itself by departing from sound constitutional principle in the electoral field. See the dissenting opinion of Mr. Justice Frankfurter in Baker v. Carr, supra, and my separate opinions in Reynolds v. Sims, 377 U.S. 533, 589 (1964), and in Oregon v. Mitchell, 400 U.S. 112, 152 (1970). I hope the day will come when the Court will frankly recognize the error of its ways in ever having undertaken to restructure state electoral processes.
>
> "I would reverse the judgment below and remand the case to the District Court with directions to dismiss the complaint."

While I personally agree with Mr. Justice Harlan, since the Supreme Court of the United States has entered this almost admitted impregnable political jungle, I have no alternative but to comply with this Mandate to act in these cases as best I can. While realizing my own short-comings and lack of expertise in the field of restructuring the structure of States' political processes, I must follow the law, whether I agree with it or not.

At a time in the distant past, the test of constitutionality of State action seemed to depend on whether or not it could be shown that the action was arbitrary, unreasonable or capricious. As Mr. Justice Brandeis stated in the case of *O'Gorman & Young v. Hartford Fire Insurance Co.*, 51 S.Ct. 130 (1931), the presumption of constitutionality of legislative action must prevail in the absence of some factual foundation in the record for overthrowing the action or where the record fails to show unreasonable action. (Citing cases at f/n 3. See also "The Presumption of Constitutionality," 31 Col. L. Rev. 1136, (1931).

Whitcomb v. Chavis, supra, appears to deviate and depart from this earlier concept and seems to foreordain and drape the Trial Judges with the awesome mantle of omnipotence and unerring clairvoyance in determining when State action "operates to dilute or minimize the voting strength of racial or political elements." It is apparent from the most cursory perusal of the testimony of the expert lay witnesses that reasonable men, and even the Judges disagree profoundly as to the propriety of the Texas Redistricting Board's plan for reapportionment of its House and Senate.

Under the present concept, the primary test of constitutionality in these cases is not the question of reasonableness, *vel non*, but rather turns on the question of whether the evidence merely preponderates against the fairness of the plan.

I have been ever mindful of the admonition to me on the eve of my induction as a Federal Judge by the Honorable John R. Brown, Chief Judge, U.S. Court of Appeals for the Fifth Circuit, when he reminded me that I was "appointed, not anointed." While I deplore the intrusion of the Federal Courts in the legislative affairs of the democratically elected officials of the

sovereign State of Texas, who act as a Redistricting Board under the constitution of this State, it is apparent that I must follow the Mandate of the Supreme Court and declare portions of the Redistricting and Reapportionment Plan invalid, if it appears from a preponderance of the evidence that the plan in any respect fails to meet the "one-person, one-vote" concept or it "dilutes or minimizes" and not necessarily "cancels" minority voting rights.

The uncertainty and ambiguity of testing constitutionality as set forth in *Whitcomb v. Chavis*, supra, makes not only its application most difficult, if not impossible, to this case. The only directive to the lower Court is that it is instructed to endeavor to prevail upon the Indiana Legislature to consider certain elements and factors that might improve the ethnic and minority voting representations of the losers in a pluralitarian election. All of this is apparently done under the Civil War Amendments. The Federal Courts are thus in effect using these amendments to judicially amend the Constitution without following the method prescribed by the Constitution itself. Federal Courts are enlarging rights not given under the Constitution by entering fields of purely State and local legislative management where there is little or no expertise on the part of the Federal Judiciary. Interjection by Federal Courts in this manner is a sad indictment and commentary on our heretofore sacred Democratic processes and we are in effect judicially branding our Democratic form of Government a failure in the form created under our Constitution.

For the reasons stated, I believe that this Court should exercise as much judicial restraint as possible in declaring the State Reapportionment Plan unconstitutional; however, where in those instances, as here,

the Court has deemed it necessary, the State should have every opportunity to correct its alleged mistakes where time permits.

THE CHALLENGE OF THE LEGISLATIVE REDISTRICTING BOARD'S PLAN FOR THE HOUSE OF REPRESENTATIVES

As the Opinion and Judgment of the Court in this case correctly states, various plaintiffs challenged the constitutionality of the entire Legislative Redistricting Board's plan for the House of Representatives on the grounds that unconstitutional deviations and disparities exist in the population of many House Districts and that multi-member districts in Texas are not uniform and result in invidious discrimination among certain racial and political elements.

In declaring the entire plan invalid my two learned colleagues rely on prior holdings of the Supreme Court that whenever the fact of deviation from population equality is raised, the burden falls upon the State to present "acceptable reasons for the variations among the populations of the various legislative districts." *Swann v. Adams*, 1967, 385 U.S. 440, 87 S.Ct. 569; and *Kirkpatrick v. Preisler*, 1969, 394 U.S. 524, 89 S.Ct. 1225 (a Congressional redistricting case which holds "(the Constitution) permits only limited population variances which are unavoidable despite a good faith effort to achieve absolute equality or for which justification is shown." However, the Supreme Court permits greater population deviation in the apportionment of State Legislatures, which is involved in this case. *Reynolds v. Sims*, 377 U.S. at 577-578. See also *Abbate v. Mundt*, 1971, 403 U.S. 182, 91 S.Ct.—, 29 L.Ed.2d 399, which upheld a county legislative apportionment with a total deviation of 11.9%. However, the Court

itself made very clear that *Abbate* was *sui generis*, involving only local government apportionment. And the *Kirkpatrick* holding may substantially erode the "tolerance" dictum in *Reynolds*. While it is obvious under the present constitutional standards that the evidence no longer has to establish that the State action, to be invalid, must be arbitrary, unreasonable or capricious; however, it must be more than mere suspicion, surmise or conjecture.

The percentage deviations shown in the legislative districts analyzed in the Opinion demonstrate that they are not unreasonable and are not, per se, a discrimination against "all of the people of Texas," as the Opinion maintains. Furthermore, the State of Texas (although I doubt it was required to do so under the meager evidence on this point which plaintiffs in their Briefs concede) went forward and explained and gave adequate reasons for the deviations which admittedly did not exceed in excess of 5.7% on the plus side and was not more than 4.1% on the minus side, except, of course, in Dallas County, which was a multi-member district and which deviation in Dallas County has been cured by the Court's prescribed single-member plan which this Court adopted and which replaced the multi-member district plan of Dallas, which allegedly had an approximately minus deviation of 21.6%. Certainly, I do not feel it is fair to the Redistricting Board of Texas to declare the entire plan invalid, especially since the Dallas plan now with the new single-member district meets the population requirements of "one-person, one vote."

My colleagues also criticize the entire State's plan because it is allegedly not a product of legislative action, but of the action of a "Board of five members, only one of whom is a member of the Legislature."

This overlooks the fact that this is a Board created under the provisions of Article III, Section 28, of the Constitution of Texas, for the purpose of redistricting the House and Senate of the State, where the Legislature in effect authorizes this Board to act, if the Legislature fails to do so. A most important element that this Court overlooks is that the officials who have been constitutionally designated to fill this vital role are five of the most prestigious officials elected by all of the people of the State of Texas, to-wit: the Lieutenant-Governor, the Speaker of the House of Representatives, the Land Commisisoner and the Comptroller of Public Accounts, which Board acted in this case under the advice and counsel of the also democratically elected Attorney General of Texas. The Opinion concludes that "we have serious doubts that this Board did a sort of deliberative job contemplated by *Reynolds v. Sims* as worthy of judicial abstinence." How the majority opinion reaches this conclusion from all the evidence in this case is a distinct mystery to me. In any event, the test is not the number of meetings or the type of "deliberative job" done by the Redistricting Board. Actually, the test is one of population and, even here, the mathematics do not have to be precise. See *Reynolds v. Sims*, supra, which holds: "Mathematical *exactness* or *precision* is hardly a workable constitutional requirement." (Emphasis supplied.)

The majority then finds that Texas has failed to justify the deviations which are analyzed in the opinion. All of the evidence adduced on the trial of this case conclusively establishes that a rational State policy does exist in Texas and requires adherence to County lines except in inter-urban areas under Article III, Section 21 (*sic**), Texas Constitution. In Texas, a violation of County lines is justifiable in legislative redistricting

*Should be Section 26.

only where a requirement of Federal law may be demonstrated. *Smith v. Craddick* (Tex. Sup. Ct., 1971) 471 S.W. 2d 375. *Kirkpatrick v. Preisler*, supra, supports the proposition that the State must do its best and must not settle for some fixed variation "small enough to be considered *de minimus* and to satisfy without question the 'as nearly as practicable' standard."

The Supreme Court of Texas obviously had in mind the tolerances of *Reynolds v. Sims*, undefined as they are, and while recognizing the difficulties presented, said 471 S.W. 2d at 379:

> "However, this court may not abrogate any provision of the constitution for the sake of simplicity. The federal requirement of equal representation clearly has not nullified Section 26 of Article III in its entirety."

The majority opinion then states that Texas has "also failed to provide rational justification for the haphazard combination of single and multi-member districts at issue in this case." The opinion then continues:

> "This irrationality, without reason justification, may be a separate and distinct ground for declaring the plan unconstitutional."

I respectfully submit that such a holding is contrary to *Whitcomb v. Chavis*, supra, which states the following:

> "But we have insisted that the challenger carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements."

Whitcomb v. Chavis, supra, concludes further that there "is no evidence that all of the multi-member districts were conceived as purposeful devices to further racial or economic discrimination."

Whitcomb v. Chavis, supra, further finds that "affirmance of the District Court would spawn endless litigation."

I can think of nothing which illustrates better the agonizing chaos which exists in the area of restructuring the political districts of the soveriegn States than this decision, wherein it is painfully obvious that the three Judges composing this very Court have almost no unanimity in finding a path from the impenetrable thicket in which the Federal Courts now find themselves.

The plaintiffs who challenge the multi-member districts throughout the State of Texas, other than in Dallas and Bexar Counties, readily concede that because of the pressures and lack of time they were unable to develop a full record of unconstitutionality as to the other counties and the impact of the at-large systems throughout the State. Furthermore, since the evidence is admittedly deficient as to the alleged inequities in the other Counties, and there have been no complaints by any citizens from those other large metropolitan "at-large districts," I feel that this is an additional reason for upholding the validity of the State's plan after the inequqities have been corrected by new plans which this Court has prescribed for Dallas and Bexar Counties.

While I wholeheartedly disagree with my colleagues, who have declared this State's plan unconstitutional, I do concur in their generosity in affording the State of Texas until on or before July 1, 1973 to adopt a plan to reapportion the legislative districts for the House of Representatives in accordance with the guidelines as set out in the Opinion and Judgment of this Court.

SUITS INVOLVING THE SENATORIAL DISTRICTS IN HARRIS AND BEXAR COUNTY

I join with Judge Goldberg in upholding the validity of the Reapportionment Plan of the State of Texas for its Senatorial Districts. The Senatorial Districts throughout the State are single-member districts and the population requirements of "one person, one vote" have apparently been achieved.

Inasmuch as no plan for Senatorial Redistricting in Bexar County or Harris County into different shaped single-member districts meets the wishes, requirements and needs of everyone and there is a vast difference of opinion almost equally divided as to what the best means of dividing the districts would be, and inasmuch as it appears that the plaintiffs have failed to sustain their burden of proving by a preponderance of the evidence that the Senatorial Districts operate to dilute or cancel the voting strength of racial or political elements, I agree that the action of the Redistricting Board is valid and constitutional.

The Supreme Court, in *Kilgarlin v. Hill*, 386 U.S. 120 (1967), approved the lower court's statement that the court's inquiry "must end when it is satisfied that the judicially-ascertainable standard of substantial equality of population in the Districts has been achieved." *Kilgarlin v. Martin*, 252 F. Supp. at 434.

In the Houston case, Senator Barbara Jordan, a Black, testified that she would not concede that she could not win from the new Senatorial District 11 because she believed that she could appeal to a broad base of the voters. Even Doctor Murray, the expert witness for the plaintiffs in the Houston case, concedes that a certain amount of gerrymandering is absolutely essential in any event in Harris County to meet the require-

ments of population and other considerations of population and other considerations such as ethnicticity, contiguity, and community of interests.

In the San Antonio (Bexar County) case, the two Senatorial posts are filled by an Anglo and a Mexican-American. The Mexican-Americans are not a minority in Bexar County; they comprise a group nearly equal in size to the Anglo group. Senatorial District 21 combines approximately 110,000 people of Bexar County with approximately 250,000 people from rural counties East, West and South of Bexar County, and although there is no real community of interest between the two groups, a division of some sort is necessary to maintain the "one person—one vote" requirement, and it appears that even if the 110,000 persons from Bexar County were to be taken from any other portion of Bexar County than from the North side, there would be no substantially greater community of interest established.

THE CHALLENGE AGAINST THE MULTI-MEMBER LEGISLATIVE DISTRICTS IN BEXAR AND DALLAS COUNTIES

While I deplore, as heretofore stated, the intrusion of the Federal Courts in the legislative affairs of the democratically elected officials of the soverign State of Texas, *Whitcomb v. Chavis*, and its progeny, dictate that Federal Courts must do so where the preponderance of the evidence discloses that the State action "operates to dilute or cancel the voting strength of racial or political elements." In this connection, I personally feel that the evidence does in fact preponderate in this direction and that, based on this test, I concur with my colleagues that the Board's Reapportionment Plans for multi-member districts in Bexar and Dallas

Counties are unconstitutional for the various reasons stated in the majority opinion.

SIGNED AND ENTERED this 27th day of January, 1972.

JOHN H. WOOD, JR.
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CIVIL ACTION NO. A-71-CA-142

CURTIS GRAVES, ET AL.

vs.

BEN BARNES, ET AL.

CIVIL ACTION NO. A-71-CA-143

DIANA REGESTER, ET AL.

vs.

BOB BULLOCK, ET AL.

CIVIL ACTION NO. A-71-CA-144

JOHNNY MARIOTT, ET AL.

vs.

PRESTON SMITH, ET. AL.

CIVIL ACTION NO. A-71-CA-145

VAN HENRY ARCHER, JR.,

vs.

PRESTON SMITH, ET AL.

GOLDBERG, CIRCUIT JUDGE,
CONCURRING SPECIALLY:

I concur in the result of Section Four (4) of the Opinion.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CIVIL ACTION NO. A-71-CA-142
CURTIS GRAVES, ET AL.
vs.
BEN BARNES, ET AL.

CIVIL ACTION NO. A-71-CA-143
DIANA REGESTER, ET AL.
vs.
BOB BULLOCK, ET AL.

CIVIL ACTION NO. A-71-CA-144
JOHNNY MARIOTT, ET AL.
vs.
PRESTON SMITH, ET AL.

CIVIL ACTION NO. A-71-CA-145
VAN HENRY ARCHER, JR.
vs.
PRESTON SMITH, ET AL.

ORDER

[Filed Feb. 8, 1972]

Plaintiffs having moved the Court to amend its Opinion and Order of the 28th day of January 1972, pursuant to Rule 60(a) of the Rules of Federal Procedure, and the Court being of the opinion that the amendment solely rectifies clerical errors and that the motion should be granted;

It is ORDERED that Legislative District 33A described in the Opinion and Order of this Court of January 28, 1972, shall be amended so as to read as follows:

DISTRICT 33A

PART OF DALLAS COUNTY:

Census Tract	Population
143 (Less Block 7, 8 & 9)	16,872
144 (all except E.D. 69, 70, 82 and 82B	8,090
145	7,142
146	6,353
147	7,157
148	3,366
149	2,564
150	5,424
151	7,681
152	8,995
TOTAL	73,644

It is ORDERED that Legislative District 33B described in the Opinion shall be made to read as follows:

DISTRICT 33B

PART OF DALLAS COUNTY:

Census Tract	Population
72 (Blocks 2 & 3 only)	2,702
97 (Blocks 3, 4 & 5 only)	4,470
99	3,236
136.01	1,649
137.01	4,561
137.02	7,303
137.03	6,797
137.04	52
137.05	39
138.01	284
138.02	9,623
139	8,439
140.01	4,283
140.02	314
141.01	1,735
141.02	391
141.03	44
141.04	7,890
142	3,873
143 (Blocks 7, 8 & 9 only)	6,078
TOTAL	73,763

It is ORDERED that Legislative District 33C described in the Opinion shall be made to read as follows:

DISTRICT 33C

PART OF DALLAS COUNTY:

Census Tract	Population
4.01	2,893
4.02	5,647
4.03	6,509
5	4,582
16	6,007
17.01	316
17.02	3,103
18	2,657
19	1,447
21	200
22.01	1,669
22.02	2,265
23	2,553
25 (Blocks 3 & 4 only)	2,304
28	2,523
29	3,778
30	649
31.01	2,465
31.02	56
32.01	377
35	3,277
36 (Block 1 only)	710
71.02	7,662
100	3,665
102	6,511
TOTAL	73,825

Copies of this Order will be forwarded to all attorneys of record, the Governor of the State of Texas, the Lieutenant Governor of the State of Texas, the Speaker of the House of Representatives of the State of Texas, the Secretary of State of the State of Texas, and the Attorney General of the State of Texas.

Dated at Dallas, Texas, this 8th day of February, 1972.

s/
IRVING L. GOLDBERG, Circuit Judge

s/
WILLIAM WAYNE JUSTICE,
District Judge

s/
JOHN H. WOOD, JR., District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CIVIL ACTION NO. A-71-CA-143
DIANA REGESTER, ET AL.
vs.
BOB BULLOCK, ET AL.

CIVIL ACTION NO. A-71-CA-144
JOHNNY MARIOTT, ET AL.
vs.
PRESTON SMITH, ET AL.

CIVIL ACTION NO. A-71-CA-145
VAN HENRY ARCHER, JR.
vs.
PRESTON SMITH, ET AL.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

[Filed, March 27, 1972]

Preston Smith, Governor of Texas, Bob Bullock, Secretary of State of Texas, Roy Orr, Chairman, Texas State Democratic Executive Committee, and the Texas Legislative Redistricting Board, composed of the following officials of the State of Texas: Ben Barnes, Lieutenant Governor, G. F. Mutscher, Speaker of the House, Bob Armstrong, Commissioner of the General Land Office, Robert S. Calvert, Comptroller of Public Accounts, and Crawford C. Martin, Attorney General;

Hereby give notice of appeal to the Supreme Court of the United States from the final judgment of in-

junction entered jointly in each of the above named and numbered causes on January 28, 1972.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

LEON JAWORSKI
ALTON F. CURRY
Special Assistant
Attorneys General

SAMUEL D. MCDANIEL
Staff Legal Assistant

Attorneys for the Defendant
State Officials

EARL LUNA
Attorney for Roy Orr

PROOF OF SERVICE

I, Samuel D. McDaniel, one of the attorneys for the appellants in the above causes, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 27th day of March, 1972, I served copies of the above Notice of Appeal on each person listed below by depositing same in the United States mail, first class postage prepaid, addressed as stated, and that such addressees constitute the attorneys of record for appellees in these causes:

Oscar H. Mauzy
1601 National Bankers Life Building
Dallas, Texas 75201

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Austin, Texas 78701

Id Idar, Jr.
319 Aztec Building
211 East Commerce
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301 North Market Street
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Dallas, Texas 75215

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Dallas, Texas 75201

Ronald L. Clower
1212 San Jacinto
Dallas, Texas 75202

SAMUEL D. MCDANIEL

EXHIBIT C

APPORTIONMENT OF THE STATE OF TEXAS INTO REPRESENTATIVE DISTRICTS

WHEREAS, The Regular Session of the 62nd Legislature of the State of Texas was adjourned sine die on May 31, 1971; and

WHEREAS, During that Regular Session, which constituted the first Regular Session after the publication of the 1970 United States decennial census, the Legislature failed to apportion the state into representative districts; and

WHEREAS, In such an event Article III, Section 28, of the Texas Constitution, requires that

> . . . same shall be done by the Legislative Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said Board shall assemble in the City of Austin within ninety (90) days after the final adjournment of such regular session. The Board shall, within sixty (60) days after assembling, apportion the state into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary. Such apportionment shall be in writing and signed by three (3) or more of the members of the Board duly acknowledged as the act and deed of such Board, and, when so executed and filed with the Secretary of State, shall have force and effect of law. Such apportionment shall become effective at the next succeeding state-wide general election.

and

WHEREAS, The Legislative Redistricting Board of

Texas assembled in the City of Austin on August 24, 1971; now, therefore,

BE IT ENACTED BY THE LEGISLATIVE REDISTRICTING BOARD OF TEXAS:

Section 1. The Representative Districts of the State of Texas shall be composed respectively of the following counties or defined areas, and each district shall be entitled to elect one representative except as otherwise provided herein:

1. Bowie County and that part of Red River County included in census enumeration districts 1, 2, 3, 4, 5, 6 7, 8, 8B, 9, 9B, 10, 11, 14 and 23.

2. Cass, Marion, Morris and Upshur counties and that part of Smith County included in census tracts 15 and 17 and census enumeration districts 124, 125, 126, 127, 128, 129, 130, 132, 133 and 134.

3. Harrison and Rusk counties.

4. Nacogdoches, Panola and Shelby counties.

5. Hardin and Jasper counties and that part of Jefferson County included in census tracts 113, 114 and 115 and that part of census tract 3 included in census enumeration district 203 and census block groups 4, 5, 6, 7, 8 and 9 and census tract 116 except census enumeration district 229.

6. Angelina, Newton, Sabine and San Augustine counties.

7. That part of Jefferson County not included in districts 5 and 8.

Place 1

Place 2

Place 3

8. Orange County and that part of Jefferson County included in census enumeration districts 213 and 218 and that part of census tract 112 included in census block groups 2, 4 and 9 and that part of census enumeration district 215 contiguous to Orange County and census tract 112.

9. Camp, Delta, Franklin, Lamar and Titus counties and that part of Red River County included in census enumeration districts 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 25.

10. Hopkins, Hunt and Rains counties.

11. Kaufman, Van Zandt and Wood counties.

12. That part of Smith County included in census tracts, 1, 2.01, 2.02, 3, 4, 5, 6, 7, 8, 9, 10, 11.01, 11.02, 12, 13, 14, 16 and census enumeration districts 63, 64, 97, 98, 99, 131, 135, 136, 137, 138, 147, 148, 149, 150, 151, 152, 153 and 154.

13. Gregg County.

14. Anderson, Freestone and Henderson counties and that part of Smith County included in census tract 21 and census enumeration districts 139, 155, 156, 157, 158, 159, 160, 161, 162, 163, 163B and 164.

15. Cherokee, Houston, Leon and Limestone counties.

16. Liberty, Polk, San Jacinto, Trinity and Tyler counties.

17. Chambers County, that part of Galveston County included in census tracts 1210, 1211, 1216, 1217, 1219, 1254 and 1255, and that part of Harris County included in census tracts 359, 360, 362, 363, 365, 366, 367, 368, 369 and 370.

18. Montgomery and Walker counties.

19. That part of Galveston County not included in district 17.

Place 1
Place 2

20. That part of Brazoria County not included in districts 21 and 31.

21. Fort Bend County and that part of Brazoria County included in census enumeration districts 1, 1B, 1C, 2, 2B, 3, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 50, 54, 78, 79, 86, 87, 88, 89, 90, 98, 99 and 102.

22. That part of Grayson County not included in district 23.

23. Cooke, Fannin and Wise counties and that part of Grayson County included in census tracts 18 and 19.

24. Collin and Rockwall counties.

25. Denton County.

26. Dallas County.

Place 1
Place 2
Place 3
Place 4
Place 5
Place 6
Place 7
Place 8
Place 9
Place 10
Place 11
Place 12
Place 13
Place 14
Place 15

Place 16
Place 17
Place 18

27. Ellis and Navarro counties.

28. Brazos and Robertson counties.

29. Austin, Burleson, Grimes, Madison, Waller and Washington counties.

30. Bastrop, Colorado, Fayette, Gonzales and Lee counties.

31. Matagorda and Wharton counties and that part of Brazoria County included in census enumeration districts, 91, 92, 93, 94, 97, 100, 101, 103, 104A, 106, 107, 108, 160 and 160B.

32. That part of Tarrant County not included in district 42.

Place 1
Place 2
Place 3
Place 4
Place 5
Place 6
Place 7
Place 8
Place 9

33. Erath, Hood, Johnson and Somervell counties.

34. Bosque, Coryell, Hamilton and Hill counties.

35. McLennan County.

Place 1
Place 2

36. Falls, Milam and Williamson counties.

37. Travis County.
Place 1
Place 2
Place 3
Place 4

38. Caldwell, Comal and Guadalupe counties.

39. DeWitt, Goliad, Jackson, Karnes, Lavaca and Refugio counties.

40. Calhoun and Victoria counties.

41. Aransas and San Patricio counties and that part of Nueces County included in census tracts 36, 37, 58, 59 and 61.

42. Parker County and that part of Tarrant County included in census tracts 108.01, 108.02, 108.03, 110.01, 110.02, 112.01, 113, 114, 115.03, 115.04, 139, 141 and 142.

43. Burnet, Lampasas and Mills counties and that part of Bell County included in census enumeration districts 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 67B, 68, 69, 70, 71, 72, 73, 74, 75, 75B, 75C, 78, 78B, 90, 93, 95, 97, 98, 99, 100, 101, 102, 103, 104 and 105.

44. That part of Bell County not included in district 43.

45. Bandera, Blanco, Frio, Hays, Kendall and Medina counties and that part of Bexar County included in census tracts 1720, 1820, 1821 and 1916.

46. That part of Bexar County not included in district 45.
Place 1
Place 2
Place 3
Place 4

Place 5
Place 6
Place 7
Place 8
Place 9
Place 10
Place 11

47. Atascosa, Bee, Dimmit, LaSalle, Live Oak, McMullen and Wilson counties.

48. That part of Nueces County not included in district 41.

Place 1
Place 2
Place 3

49. Kenedy, Kleberg and Willacy counties and that part of Hidalgo County included in census tracts 225, 226, 231, 232, 233, 234 and 243.

50. That part of Cameron County not included in district 51.

51. That part of Cameron County included in census tracts 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120 and 121 and that part of Hidalgo County included in census tracts 227, 229 and 230.

52. That part of Wichita County not included in district 53.

53. Archer, Clay and Young counties and that part of Wichita County included in census tracts 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 136, 137 and 138.

54. Eastland, Jack, Montague, Palo Pinto and Stephens counties.

55. Brown, Callahan, Coleman, Comanche, McCulloch and Runnels counties.

56. Gillespie, Kerr, Kimble, Llano, Mason, Menard, Real, San Saba, Schleicher and Uvalde counties.

57. Webb and Zapata counties.

58. Brooks, Duval, Jim Hogg, Jim Wells and Starr counties.

59. That part of Hidalgo County not included in districts 49 and 51.

Place 1

Place 2

60. Concho, Irion and Tom Green counties.

61. Fisher, Jones, Mitchell and Nolan counties and that part of Taylor County included in census tracts 120, 121, 127, 128, 129, 130, 131, 132, 133, 134, 135 and 136 and that part of census tract 126 included in census enumeration district 79.

62. That part of Taylor County not included in district 61.

63. Borden, Coke, Dawson, Howard, Scurry and Sterling counties.

64. Dallam, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Roberts and Sherman counties.

65. Carson and Randall counties and that part of Potter County included in census tracts, 101, 117, 121, 129, 130, 133, 134, 135, 138, 141, 142 and 143.

66. Armstrong, Briscoe, Childress, Collingsworth, Donley, Floyd, Gray, Hall, Motley and Wheeler counties.

67. That part of Potter County not included in district 65.

68. Glasscock, Midland, Reagan and Upton counties.

69. Crane, Loving, Pecos, Reeves, Ward and Winkler counties and that part of Ector County included in census tracts, 1, 20, 21, 22, 25 and 26.

70. Brewster, Crockett, Edwards, Kinney, Maverick, Sutton, Terrell, Val Verde and Zavala counties.

71. Culberson, Hudspeth, Jeff Davis and Presidio counties and that part of El Paso County included in census tracts, 34.02, 41.02, 42.01, 42.02, 43.01, 43.02, 43.03 and 103.

72. That part of El Paso County not included in district 71.

Place 1
Place 2
Place 3
Place 4

73. That part of Ector County not included in district 69.

74. Bailey, Castro, Cochran, Deaf Smith, Lamb, Oldham and Parmer counties.

75. That part of Lubbock County not included in District 76.

Place 1
Place 2

76. Hale and Swisher counties and that part of Lubbock County included in census tracts 22, 25, 101, 102, 105, 106 and 107.

77. Andrews, Gaines, Hockley, Lynn, Martin, Terry and Yoakum counties.

78. That part of Harris County included in census tracts, 234, 249, 250, 251, 252, 253, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275 and 364.

79. That part of Harris County included in census tracts, 125, 126, 401, 402, 403, 404, 505, 506, 512, 513 and 514.

80. That part of Harris County included in census tracts 316, 331, 332, 333, 335, 338, 339, 412, 414 and 415.

81. That part of Harris County included in census tracts, 327, 328, 334, 336, 337, 340, 341, 342, 343, 428, 429, 430, 431 and 432.

82. That part of Harris County included in census tracts 507, 510, 511, 517, 518, 519 and 520.

83. That part of Harris County included in census tracts 406, 420, 421, 442, 443, 515 and 516.

84. That part of Harris County included in census tracts 523, 524, 525, 526, 527, 530, 531 and 540.

85. That part of Harris County included in census tracts 314, 315, 317, 318, 319, 329 and 330.

86. That part of Harris County included in census tracts, 124, 302, 304, 305, 306, 307, 308 and 309.

87. That part of Harris County included in census tracts, 121, 122, 123, 201, 202, 301, 303, 310, 311, 312, 501, 502 and 504.

88. That part of Harris County included in census tracts 204, 205, 206, 207, 208, 216 and 503.

89. That part of Harris County included in census tracts 214, 215, 217, 218, 219, 225, 226 and 227.

90. That part of Harris County included in census tracts 405, 407, 408, 409, 410, 411, 413, 416 and 417.

91. That part of Harris County included in census tracts 418, 419, 423, 424, 425 and 426.

92. That part of Harris County included in census tracts 422, 439, 440, 441, 444 and 445.

93. That part of Harris County included in census tracts 427, 433, 434, 435, 436, 437, 438, 446, 447 and 449.

94. That part of Harris County included in census tracts 222, 223, 240, 241, 242, 448, 450, 451, 452, 528, 529, 534, 535, 536, 537, 538, 539, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557 and 558.

95. That part of Harris County included in census tracts 220, 221, 508, 509, 521, 522, 532 and 533.

96. That part of Harris County included in census tracts, 224, 228, 229, 230, 231, 235, 236, 237, 238, 239, 243, 244, 245, 246, 247, 248, 254 and 559.

97. That part of Harris County included in census tracts 313, 320, 321, 323, 324, 325 and 326.

98. That part of Harris County included in census tracts 203, 209, 210, 211, 212, 213, 322 and 350.

99. That part of Harris County included in census tracts 232, 233, 351, 352, 353, 354, 355, 356, 357, 358 and 361.

100. That part of Harris County included in census tracts, 344, 345, 346, 347, 348, 349, 371, 372, 373, 374 and 375.

101. Baylor, Cottle, Crosby, Dickens, Foard, Garza, Hardeman, Haskell, Kent, King, Knox, Shackelford, Stonewall, Throckmorton and Wilbarger counties.

Sec. 2. The terms "census tract" and "census enumeration district," as used in this act, mean those geo-

graphic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

Sec. 3. (a) As soon as possible after this act is filed with the secretary of state, the secretary of state shall transmit a copy of the act to the county clerk of each county in the state, to be filed as an official public record in the office of the county clerk. At the same time, the secretary of state shall also furnish to the county judge of each county which is divided into two or more representative districts or parts of two or more representative districts appropriate maps showing census tracts, census enumeration district, or census block group lines to facilitate the identification of representative district boundaries.

The county judge shall present the maps to the commissioners court, to be used in making whatever changes are necessary in election precinct boundaries in order to comply with the prohibition in Subsection (b), Section 12, Texas Election Code (Article 2.04, Vernon's Texas Election Code), which reads in relevant part as follows:

> "(b) No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor out of the parts of two or more justice precincts or commissioners precincts; and no election precinct shall be formed out of two or more congressional districts or state senatorial districts or state representative districts, nor out of the parts of two or more such districts. . . . Subject

to the provisions of the first sentence of this paragraph, no election precinct shall have resident therein less than fifty nor more than two thousand voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in precincts in which voting machines have been adopted for use in accordance with Section 79 of this code, the maximum number of voters shall be three thousand."

(b) Although the time specified in Subsection (b) of Article 2.04 of the Texas Election Code, for making changes in election precinct boundaries has passed, in order to make the apportionment districts adopted by the Legislative Redistricting Board effective for the next election year in compliance with the mandate of Section 28 of Article III of the Constitution of the State of Texas, the commissioners courts, within 30 days after the date the maps are mailed by the secretary of state as required by Subsection (a) of this section, shall make such changes in the boundaries of the election precincts of their respective counties as may be necessary to comply with the above quoted provision of Subsection (b) of Article 2.04 of the Texas Election Code.

Such changes in the election precinct boundaries shall become operative in the holding of elections on and after March 1, 1972, and registration of voters for voting at elections held during the 1972 voting year shall conform to the changes. Where changes in election precincts are necessary, the county tax assessor-collector as registrar of voters shall defer the issuance of registration certificates for voters residing in the affected areas until the changes have been made. The registrar is further directed to make all necessary corrections in the registration records for the voting period

which begins on March 1, 1972, as provided in Section 48b, Texas Election Code, as added by Section 9, Chapter 827, Acts of the 62nd Legislature, Regular Session, 1971 (Article 5.16b, Vernon's Texas Election Code). Any and all acts required of any other state or county officer as a result of changes made in the election precincts as necessitated by this act may be delayed accordingly, but only for the period of time necessary to accomplish the acts required.

Sec. 4. The apportionment plan adopted by the Legislative Redistricting Board is effective for the elections, primary and general, for all members of the house of representatives to the 63rd Legislature, and continues in effect for succeeding legislatures. This apportionment plan does not affect the membership of the 62nd Legislature. If a vacancy occurs in the office of any member of the house of representatives of the 62nd Legislature and a special election to fill the vacancy becomes necessary, the election shall be held in the district as it existed before the effective date of this act.

WE, THE UNDERSIGNED, hereby acknowledge the foregoing instrument to be the act and deed of the Legislative Redistricting Board of Texas, executed on this 22nd day of October A.D. 1971.

s/
CRAWFORD C. MARTIN, Chairman
Attorney General of Texas

s/
BEN BARNES
Lieutenant Governor of Texas

s/
G. F. (GUS) MUTSCHER
Speaker, House of Representatives
of Texas

s/
BOB ARMSTRONG
Commissioner of the General
Land Office of Texas

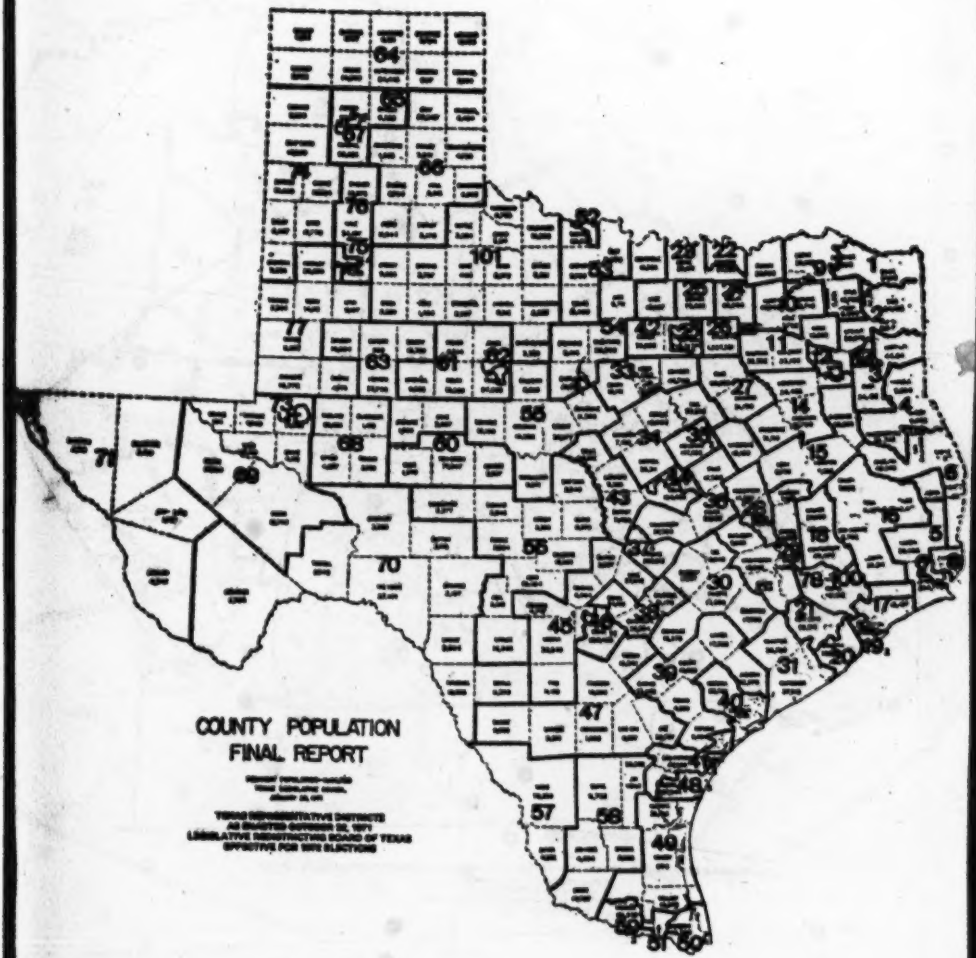
s/
ROBERT S. CALVERT
Comptroller of Public Accounts
of Texas

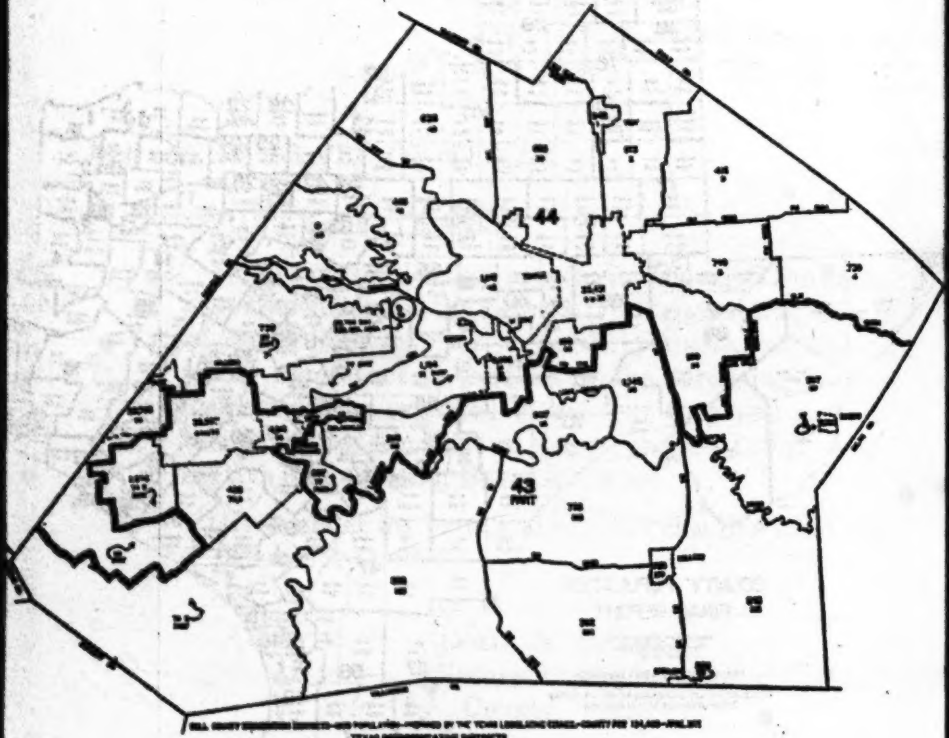
THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

Before me on this day personally appeared the above signed members of the Legislative Redistricting Board of Texas known to me to be the persons and officers whose names are subscribed to the foregoing instrument and acknowledged to me that they and each of them executed the same as the act and deed of the Legislative Redistricting Board of Texas.

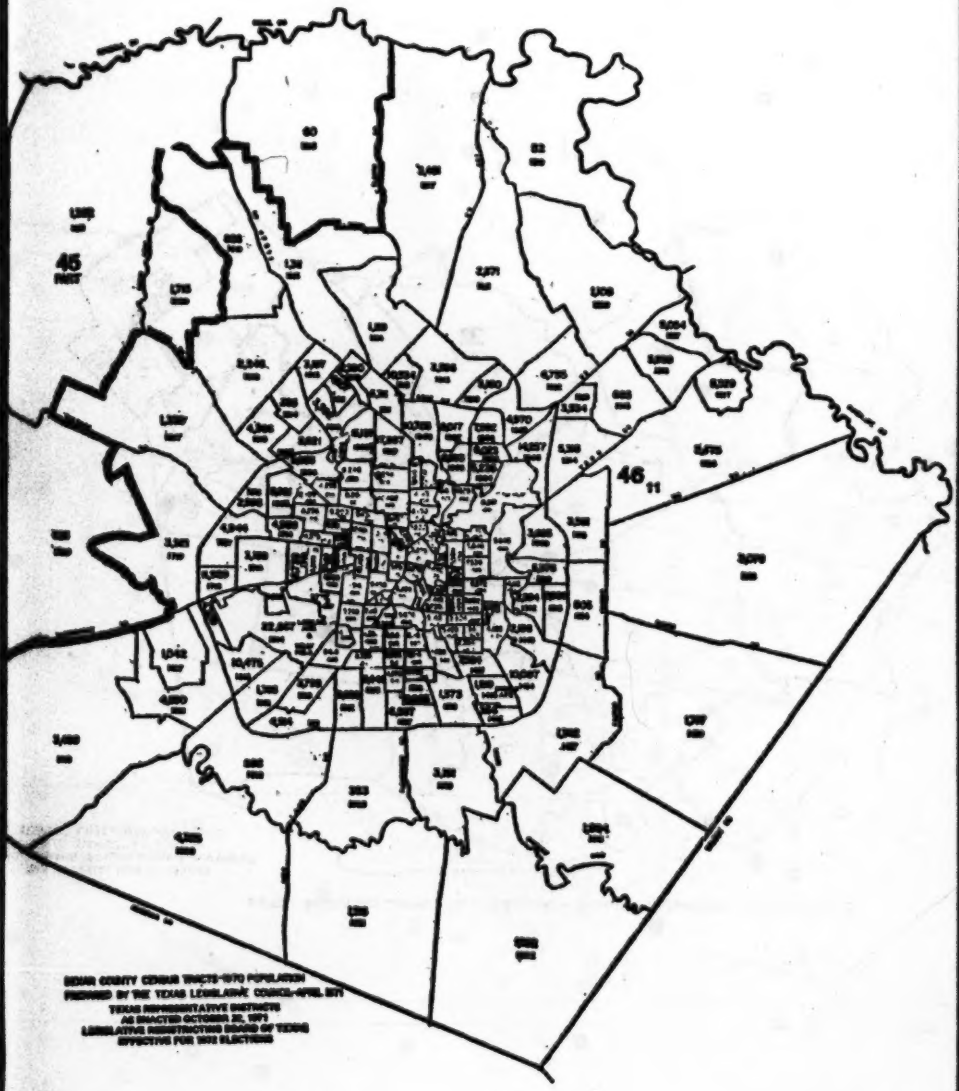
Given under my hand and seal of office this 22nd day of October A.D. 1971.

s/
JAMES R. REYNOLDS
Notary Public in and for Travis
County, Texas

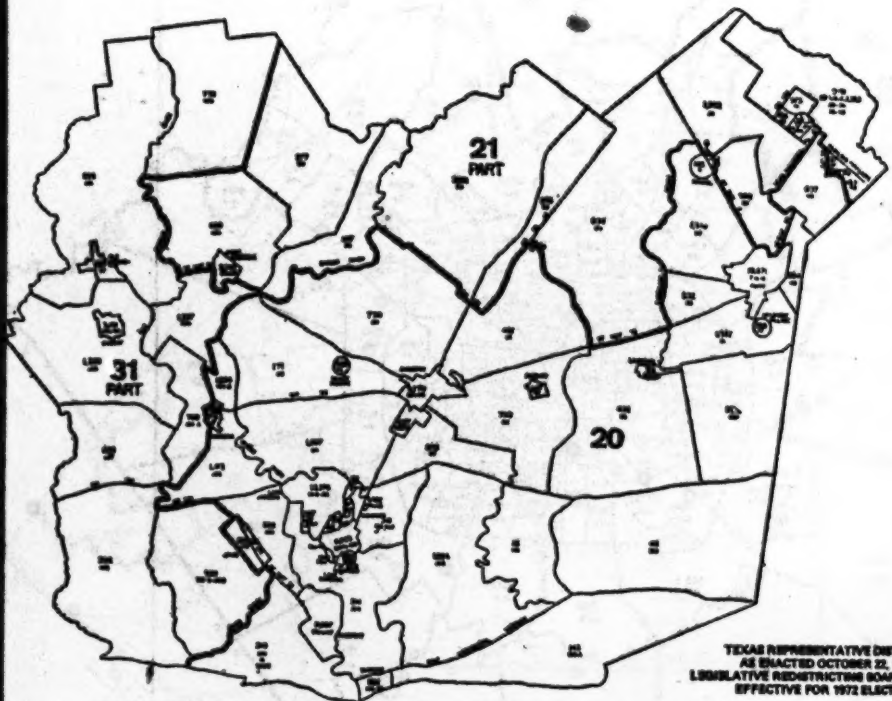

COUNTY POPULATION
FINAL REPORT



TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS

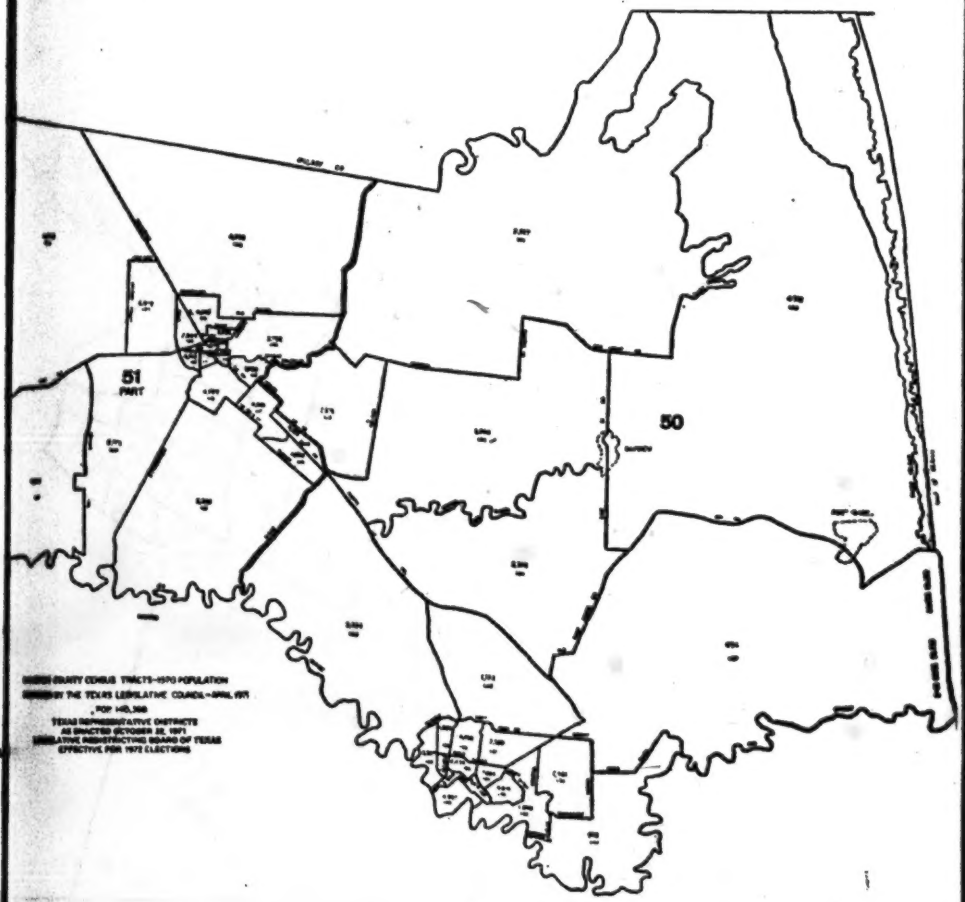


BEXAR COUNTY CENSUS TRACTS-1970 POPULATION
PREPARED BY THE TEXAS LEGISLATIVE COUNCIL-APRIL 1971
TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS



TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXA
EFFECTIVE FOR 1972 ELECTIONS

BRAZORIA COUNTY ENUMERATION DISTRICTS — 1970 POPULATION — COUNTY POPULATION 108,312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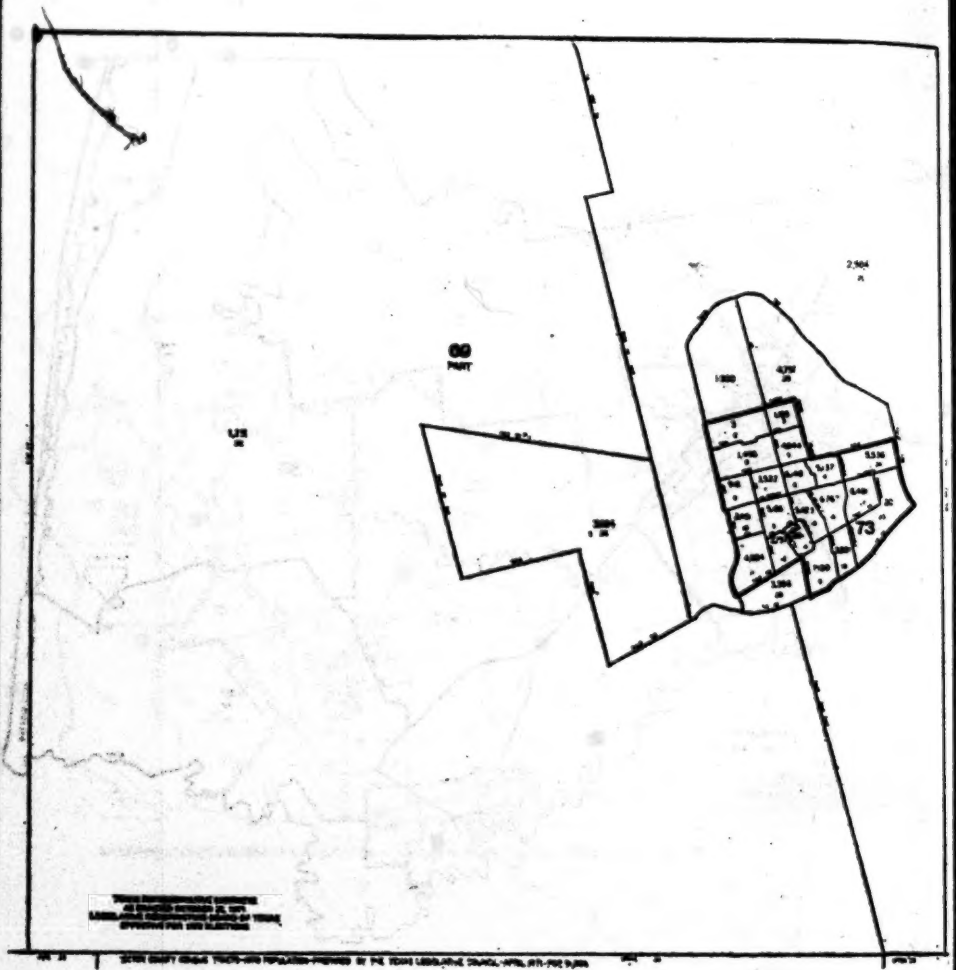

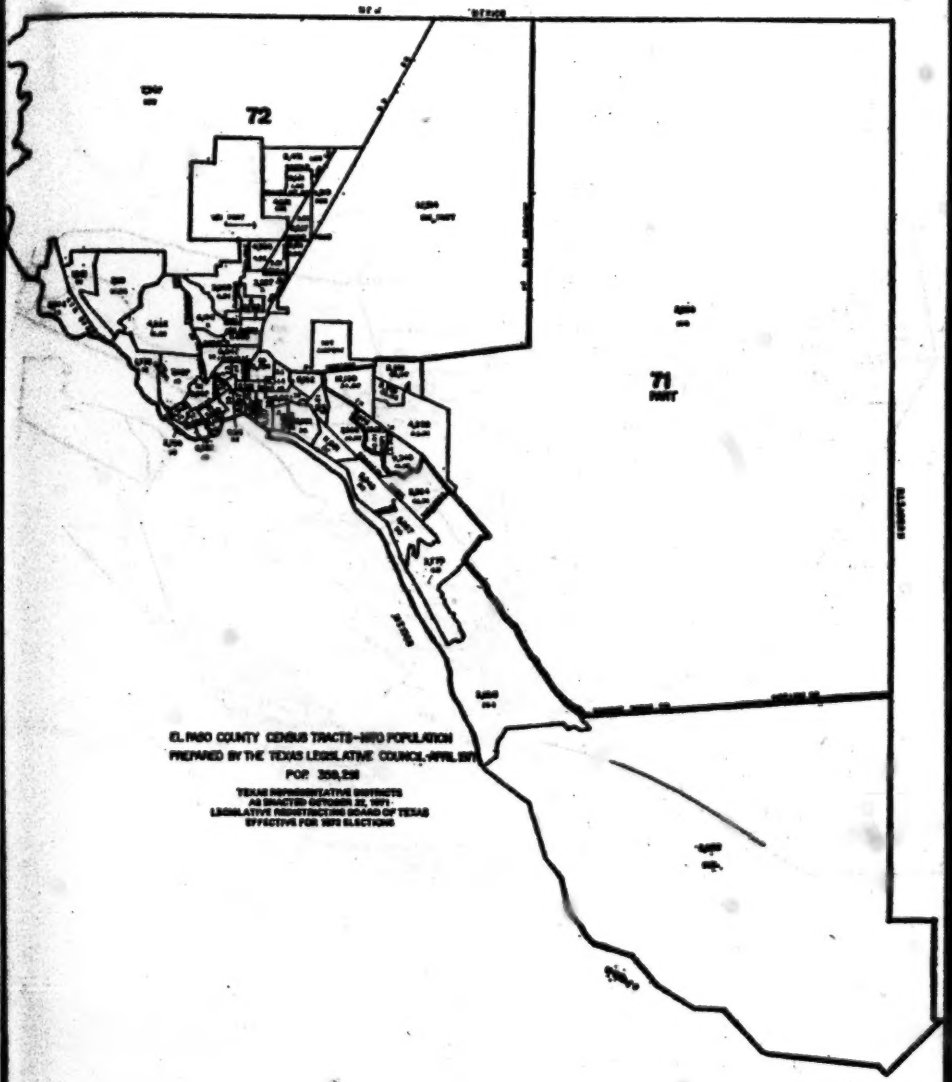
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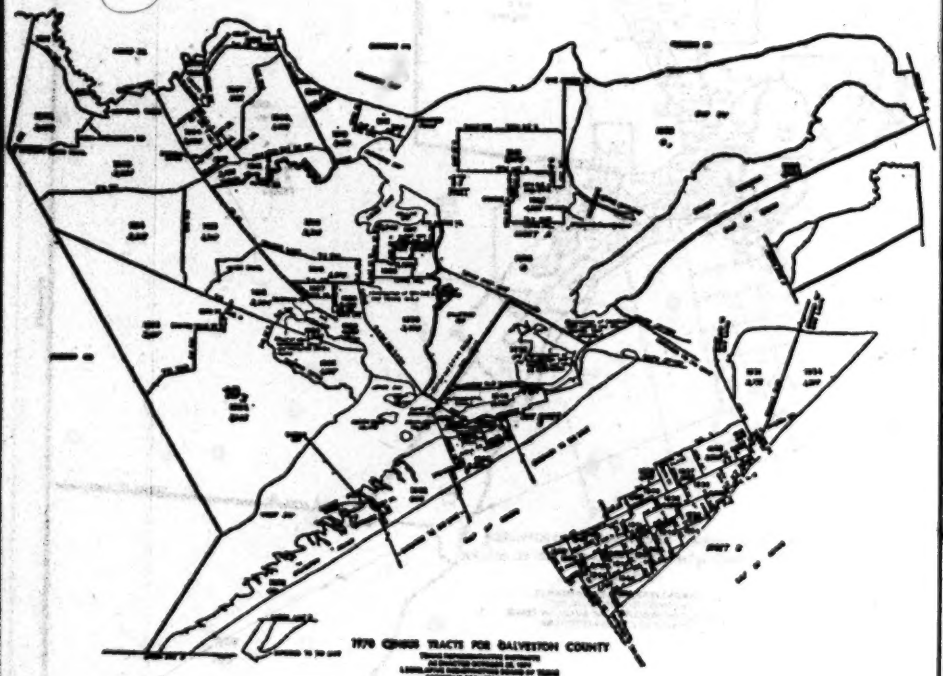
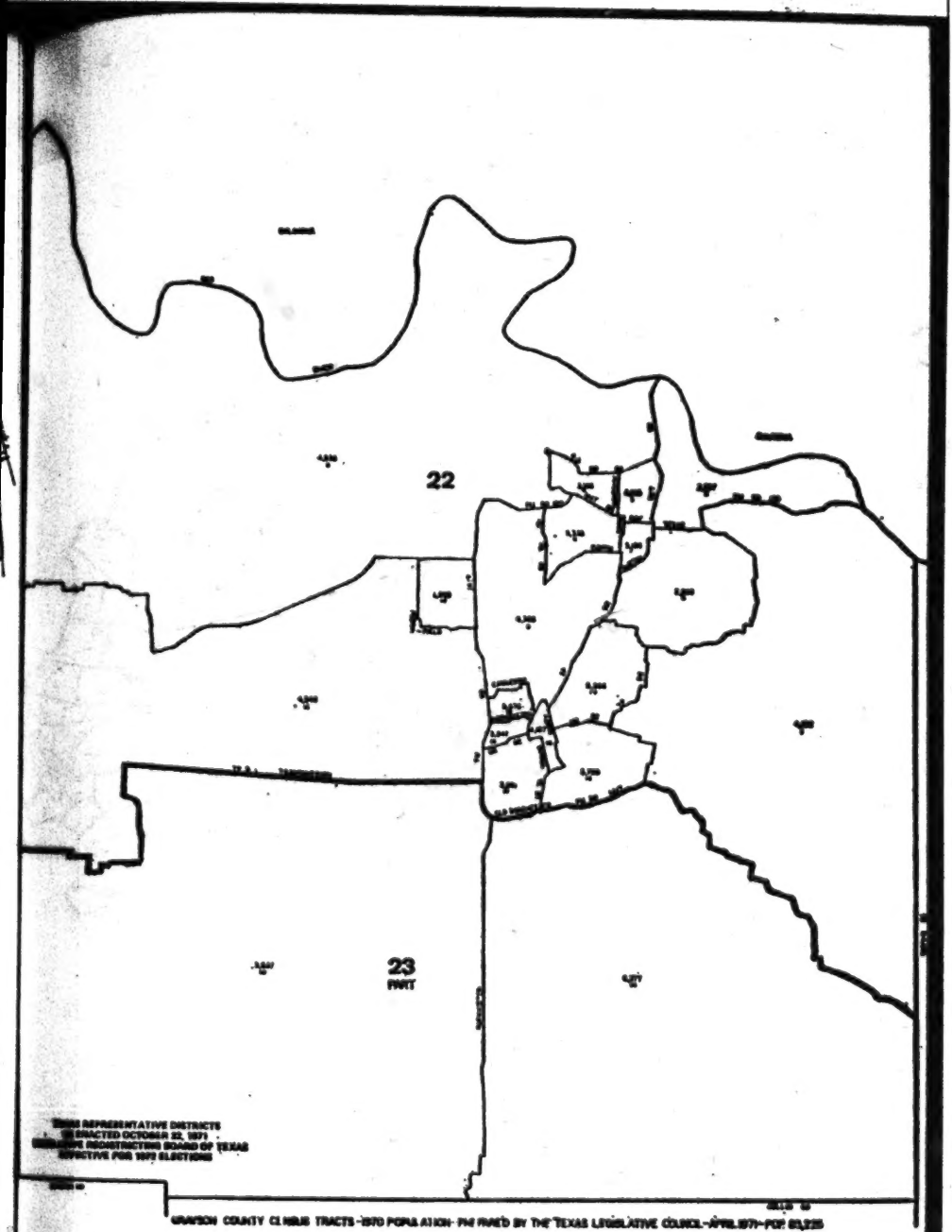
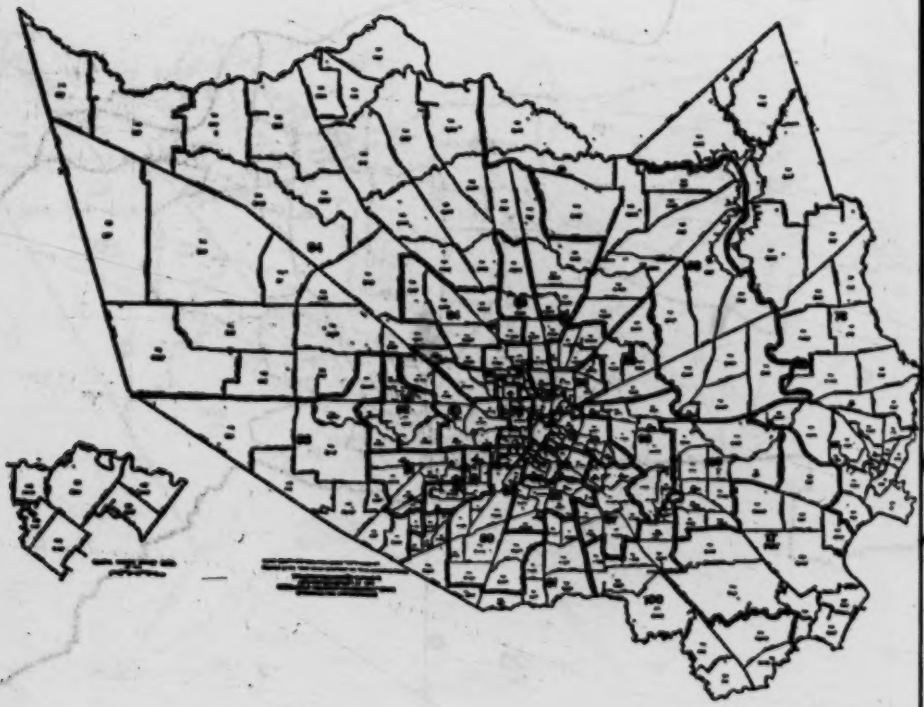
EL PASO COUNTY CENSUS TRACTS—1970 POPULATION
PREPARED BY THE TEXAS LEGISLATIVE COUNCIL

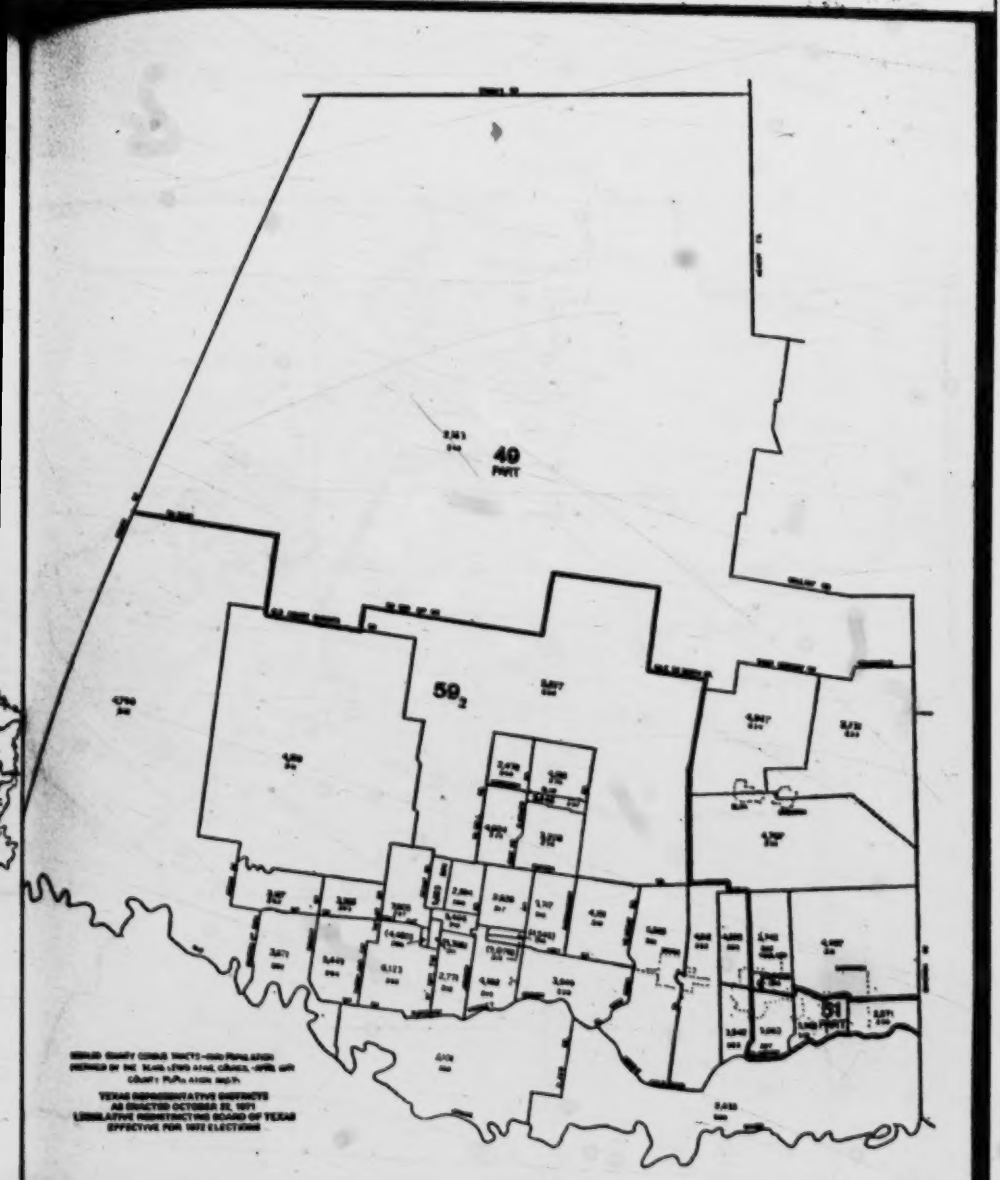


1970 CENSUS TRACTS FOR GALVESTON COUNTY



GRAYSON COUNTY CENSUS TRACTS-1970 POPULATION-PREPARED BY THE TEXAS LEGISLATIVE COUNCIL-APRIL 1971-POP. 83,225

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PART
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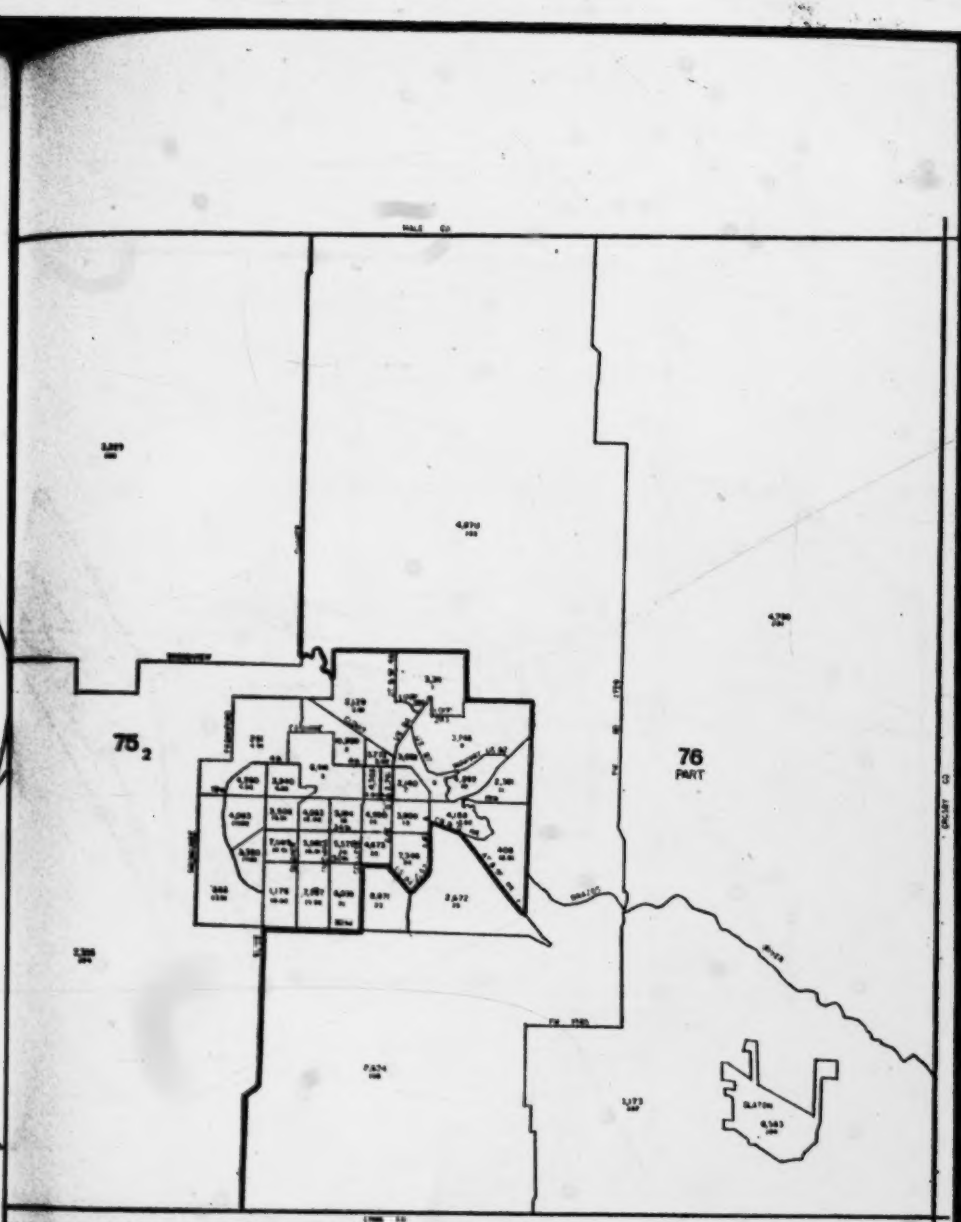
PART

JEFFERSON COUNTY CENSUS TRACTS—1970 POPULATION—ORDERED BY THE TEXAS LEGISLATIVE COUNCIL
APRIL 1971—COUNTY POPULATION 244,773

TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS



COUNTY CENSUS TRACTS—1970 POPULATION—PREPARED BY THE TEXAS LEGISLATIVE COUNCIL—APRIL 1971—COUNTY POPULATION 179,295

TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS

TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS

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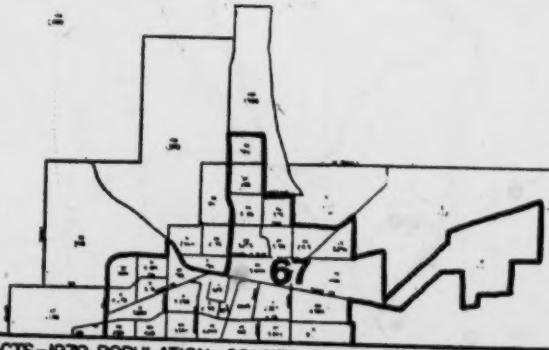
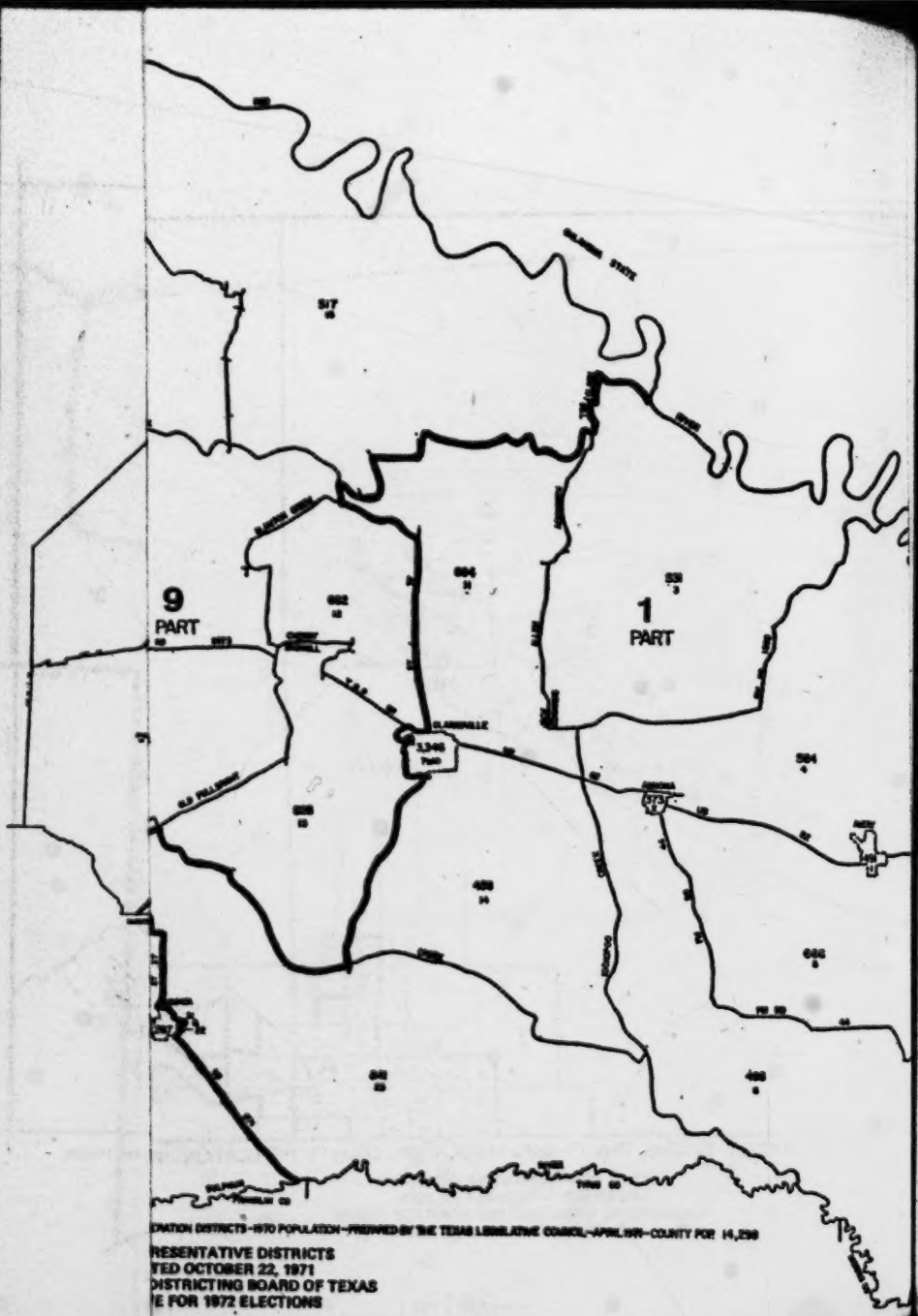


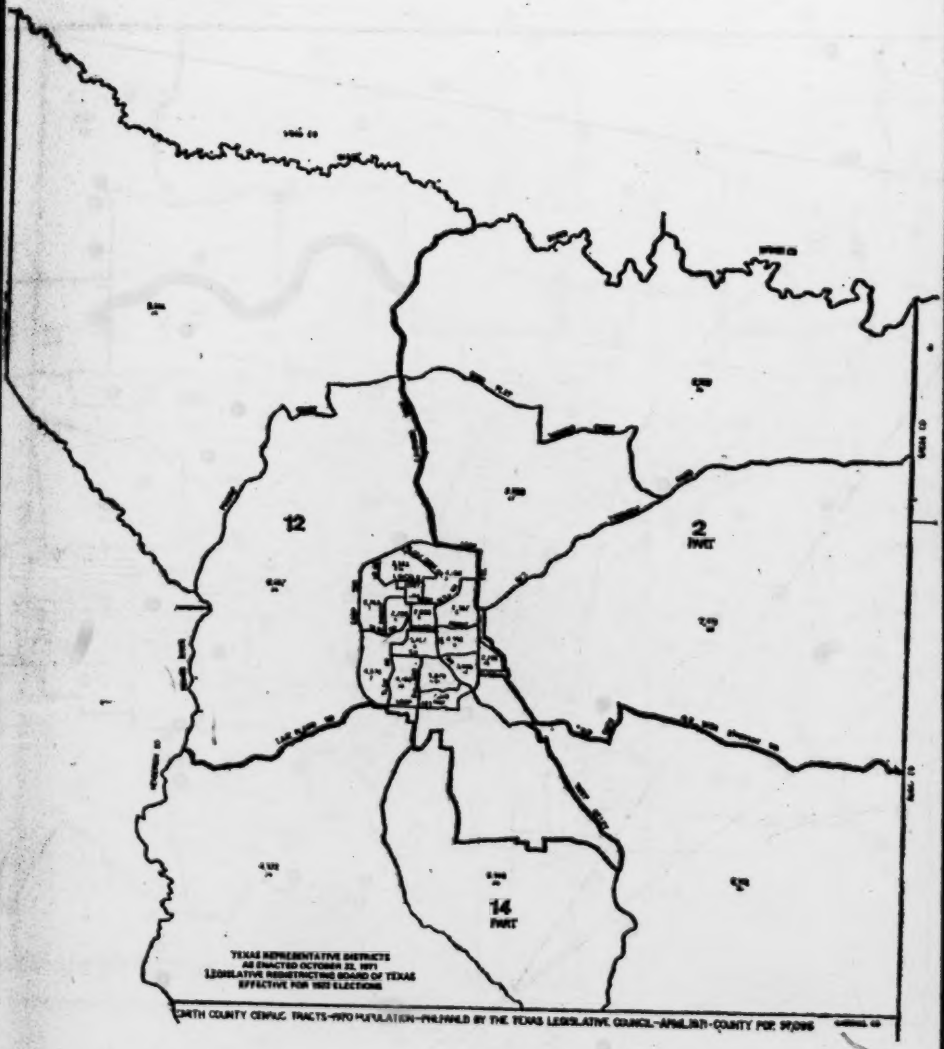
POTTER COUNTY CENSUS TRACTS-1970 POPULATION-COUNTY POPULATION 90,511

TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS



ATION DISTRICTS—1970 POPULATION—PREPARED BY THE TEXAS LEGISLATIVE COUNCIL—APRIL 1971—COUNTY FOR 14,259

RESENTATIVE DISTRICTS
TED OCTOBER 22, 1971
DISTRICTING BOARD OF TEXAS
E FOR 1972 ELECTIONS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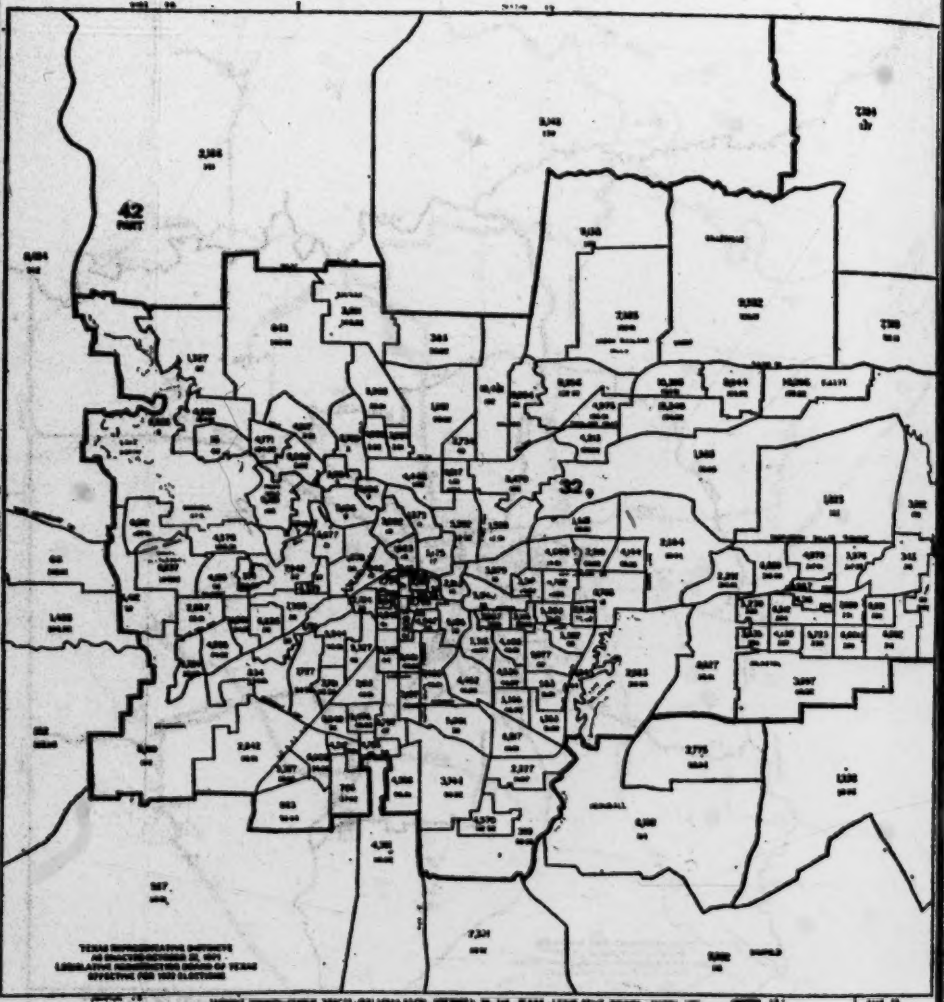
TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS
SMITH COUNTY CENSUS TRACTS-1970 POPULATION-PREPARED BY THE TEXAS LEGISLATIVE COUNCIL-APPELLATE-COUNTY POP. 97,096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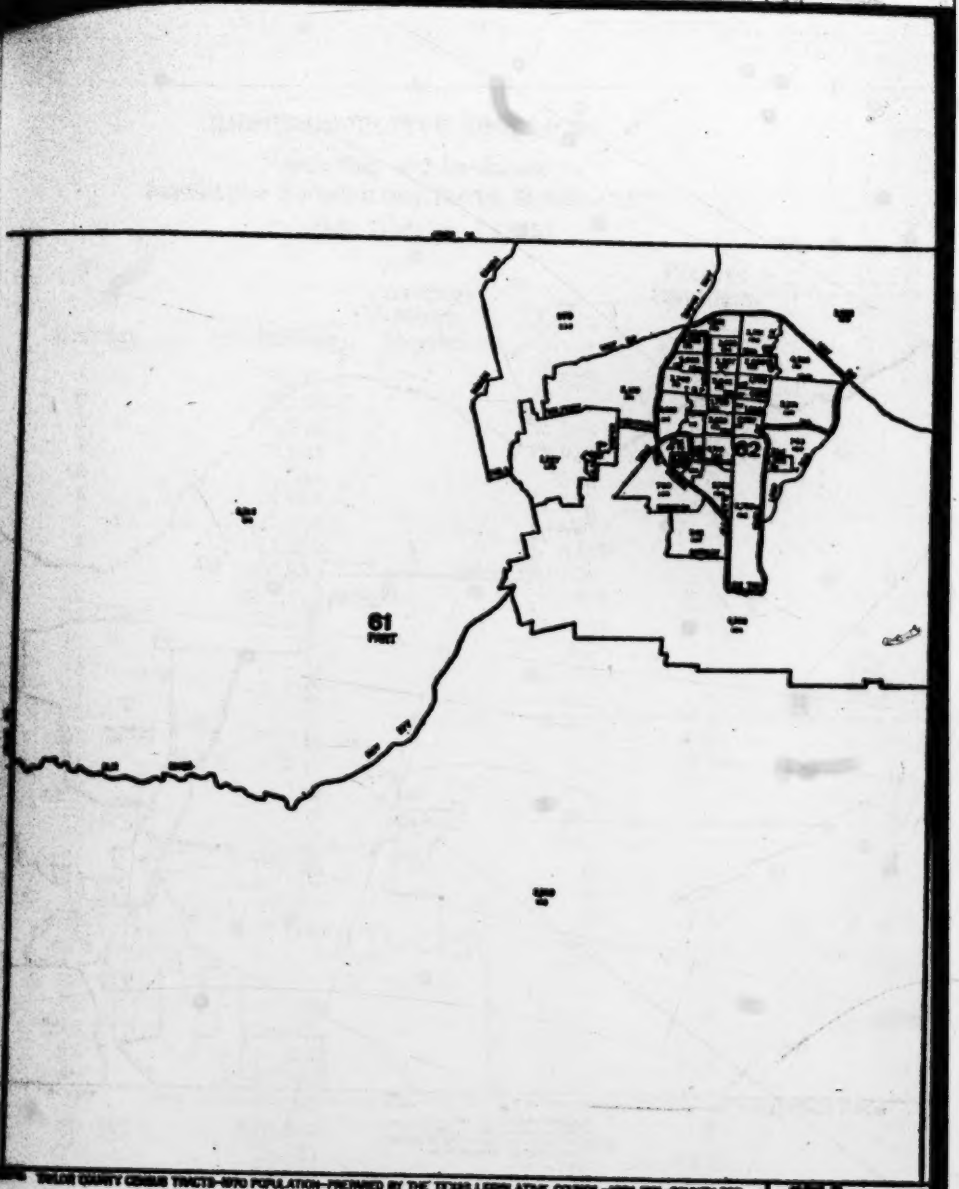
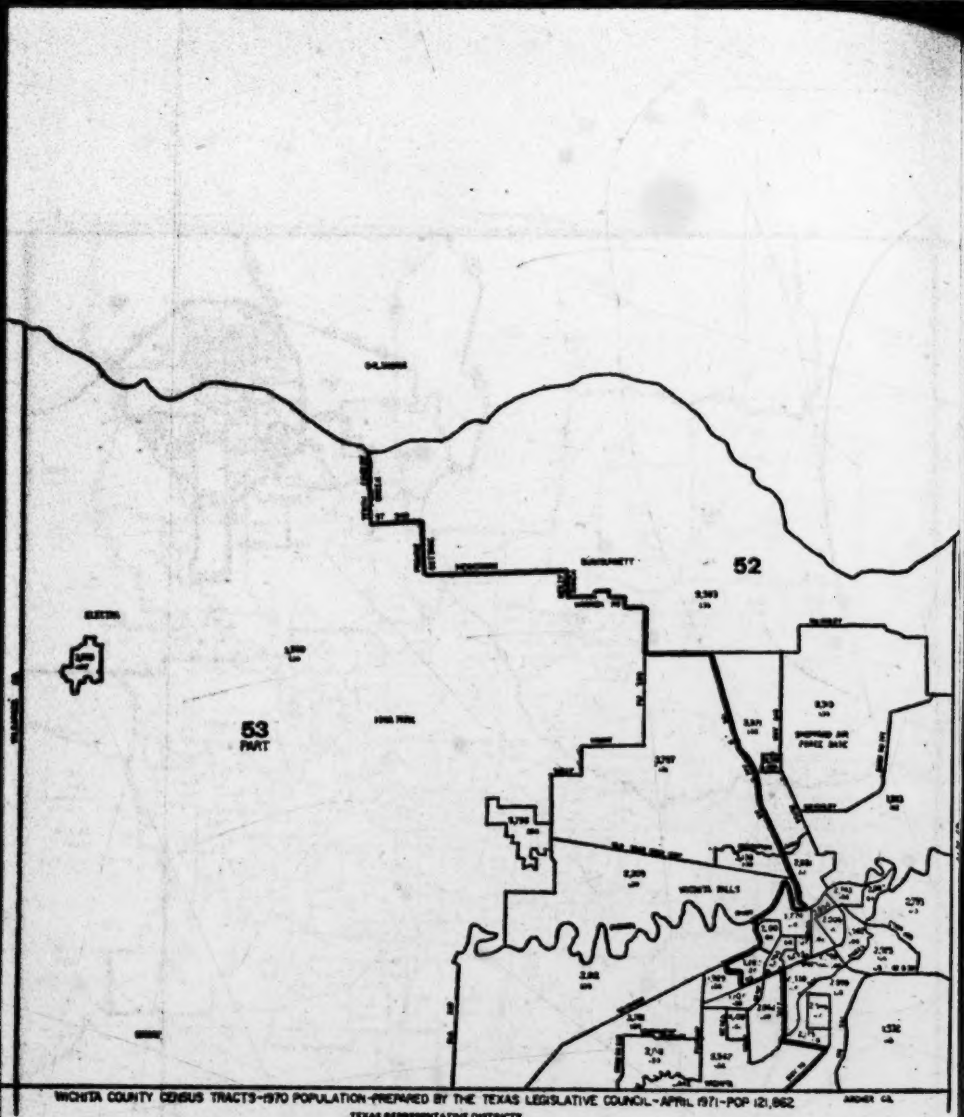


TAYLOR COUNTY CENSUS TRACTS-1970 POPULATION—PREPARED BY THE TEXAS LEGISLATIVE COUNCIL—APRIL 1971—COUNTY POP 97,809

TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 30, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS



WICHITA COUNTY CENSUS TRACTS-1970 POPULATION-PREPARED BY THE TEXAS LEGISLATIVE COUNCIL-APRIL 1971-POP 121,862

TEXAS REPRESENTATIVE DISTRICTS
AS ENACTED OCTOBER 22, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS

REPRESENTATIVE DISTRICTS

Population and Deviation
Legislative Redistricting Board, October 1971
(Average District, 74,645)

District		Population	Average Multi-Member	(Under) Over	Percent Deviation Over (Under)
1		76,285		1,640	2.2
2		77,102		2,457	3.3
3		78,943		4,298	5.8
4		71,928		(2,717)	(3.6)
5		75,014		369	.5
6		76,051		1,406	1.9
7	(3)	221,314	73,771	(874)	(1.2)
8		74,303		(342)	(.5)
9		76,813		2,168	2.9
10		72,410		(2,235)	(3.0)
11		73,136		(1,509)	(2.0)
12		74,704		59	.1
13		75,929		1,284	1.7
14		76,597		1,952	2.6
15		76,701		2,056	2.8
16		74,218		(427)	(.6)
17		72,941		(1,704)	(2.3)
18		77,159		2,514	3.4
19	(2)	150,209	75,104	459	.6
20		75,592		947	1.3
21		74,651		6	.0
22		73,311		(1,334)	(1.8)
23		75,777		1,132	1.5
24		73,966		(679)	(.9)
25		75,633		988	1.3
26	(18)	1,327,321	73,740	(905)	(1.2)
27		77,788		3,143	4.2
28		72,367		(2,278)	(3.1)
29		76,505		1,860	2.5
30		77,008		2,363	3.2
31		75,025		380	.5
32	(9)	675,499	75,055	410	.5
33		73,071		(1,574)	(2.1)
34		76,071		1,426	1.9
35	(2)	147,553	73,777	(868)	(1.2)
36		74,633		(12)	(.0)
37	(4)	295,516	73,879	(766)	(1.0)
38		78,897		4,252	5.7
39		77,363		2,718	3.6
40		71,597		(3,048)	(4.1)

41		73,678		(967)	(1.3)
42		74,706		61	.1
43		74,160		(485)	(.6)
44		75,278		633	.8
45		78,090		3,445	4.6
46	(11)	826,698	75,154	509	.7
47		76,319		1,674	2.2
48	(3)	220,056	73,352	(1,293)	(1.7)
49		76,254		1,609	2.2
50		74,268		(377)	(.5)
51		75,800		1,155	1.5
52		76,601		1,956	2.6
53		74,499		(146)	(.2)
54		77,505		2,860	3.8
55		76,947		2,302	3.1
56		74,070		(575)	(.8)
57		77,211		2,566	3.4
58		75,120		475	.6
59	(2)	144,995	72,497	(2,148)	(2.9)
60		75,054		409	.5
61		73,356		(1,289)	(1.7)
62		72,240		(2,405)	(3.2)
63		75,191		546	.7
64		74,546		(99)	(.1)
65		75,720		1,075	1.4
66		72,310		(2,335)	(3.1)
67		75,034		389	.5
68		74,524		(121)	(.2)
69		74,765		120	.2
70		77,827		3,182	4.3
71		73,711		(934)	(1.3)
72	(4)	297,770	74,442	(203)	(.3)
73		74,309		(336)	(.5)
74		73,743		(902)	(1.2)
75	(2)	147,722	73,861	(784)	(1.1)
76		76,083		1,438	1.9
77		77,704		3,059	4.1
78		71,900		(2,745)	(3.7)
79		75,164		519	.7
80		75,111		466	.6
81		75,674		1,029	1.4
82		76,006		1,361	1.8
83		75,752		1,107	1.5
84		75,634		989	1.3
85		71,564		(3,081)	(4.1)
86		73,157		(1,488)	(2.0)
87		73,045		(1,600)	(2.1)
88		75,076		431	.6
89		74,206		(439)	(.6)
90		74,377		(268)	(.4)

91	73,381	(1,264)	(1.7)
92	71,908	(2,737)	(3.7)
93	72,761	(1,884)	(2.5)
94	73,328	(1,317)	(1.8)
95	73,825	(820)	(1.1)
96	72,505	(2,140)	(2.9)
97	74,202	(443)	(.6)
98	72,380	(2,265)	(3.0)
99	74,123	(522)	(.7)
100	75,682	1,037	1.4
101	75,204	559	.7

EXHIBIT D

APPORTIONMENT OF THE STATE OF TEXAS INTO SENATORIAL DISTRICTS

WHEREAS, The Regular Session of the 62nd Legislature of the State of Texas was adjourned sine die on May 31, 1971; and

WHEREAS, During that Regular Session, which constituted the first Regular Session after the publication of the 1970 United States Decennial census, the Legislature failed to apportion the state into senatorial districts; and

WHEREAS, In such an event Article III, Section 28, of the Texas Constitution, requires that

> . . . same shall be done by the Legislative Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said Board shall assemble in the City of Austin within ninety (90) days after the final adjournment of such regular session. The Board shall, within six (60) days after assembling, apportion the state into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary. Such apportionment shall be in writing and signed by three (3) or more of the members of the Board duly acknowledged as the act and deed of such Board, and, when so executed and filed with the Secretary of State, shall have force and effect of law. Such apportionment shall become effective at the next succeeding state-wide general election.

and

WHEREAS, The Legislative Redistricting Board

of Texas assembled in the City of Austin on August 24, 1971; now, therefore,

BE IT ENACTED BY THE LEGISLATIVE REDISTRICTING BOARD OF TEXAS:

Section 1. The State of Texas is apportioned into senatorial districts as provided in the following sections. Each district is entitled to elect one member to the Senate of the State of Texas.

Sec. 2. District 1 is composed of Bowie, Camp, Cass, Delta, Fannin, Franklin, Grayson, Harrison, Hopkins, Lamar, Marion, Morris, Red River and Titus Counties.

Sec. 3. District 2 is composed of Collin, Gregg, Hunt, Rains, Rockwall, Smith, Upshur, Van Zandt and Wood Counties.

Sec. 4. District 3 is composed of Anderson, Angelina, Cherokee, Hardin, Henderson, Jasper, Kaufman, Nacogdoches, Newton, Panola, Rusk, Sabine, San Augustine, Shelby and Tyler Counties.

Sec. 5. District 4 is composed of Chambers, Jefferson, Liberty and Orange Counties.

Sec. 6. District 5 is composed of Austin, Brazos, Burleson, Colorado, Falls, Freestone, Grimes, Houston, Leon, Madison, Montgomery, Polk, Robertson, San Jacinto, Trinity, Walker, Waller, Washington and Wharton Counties.

Sec. 7. District 6 is composed of that part of Harris County included in census tracts 203, 209, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 234, 235, 236, 238, 239, 240, 241, 519, 520, 521, 522, 523, 524, 525, 526, 530, 531, 532, 533, 534, 539 and 540.

Sec. 8. District 7 is composed of Fort Bend County

and that part of Harris County included in census tracts 314, 318, 319, 320, 323, 324, 325, 326, 327, 328, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 348, 371, 372, 375, 408, 409, 410, 411, 412, 413, 414, 415, 416, 428, 429, 430 and 431

Sec. 9. District 8 is composed of that part of Dallas County included in census tracts 4.01, 4.02, 4.03, 5, 6.01, 17.01, 17.02, 18, 19, 21, 31.01, 32.01, 71.01, 71.02, 72, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 94, 95, 96.01, 96.02, 96.03, 96.04, 97, 98, 99, 132, 134.01, 134.02, 135, 136.01, 136.02, 136.03, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 141.04, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153.01, 153.02, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, 193.01, 193.02, 194, 195.01 and 195.02.

Sec. 10. District 9 is composed of Ellis, Limestone and Navarro Counties and that part of Dallas County included in census tracts, 92.01, 92.02, 93.01, 116, 117, 118, 119, 130,01, 130.02, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.02, 168, 169.01, 169.02, 169.03, 169,04, 170, 171, 172, 173.01, 173.02, 174, 177, 178.01, 178.02, 181.01, 181.02, 181.03, 181.04, 182, 183, 184, 185.01, 185.02, 186, 187, 188, 189, 190.01, 190.02, 190.03, 190.04, 190.05, 190.06, 190.07, 191 and 192.01.

Sec. 11. District 10 is composed of that part of Tarrant County included in census tracts 1.01, 1.02, 2.01, 2.02, 3, 4, 5.01, 5.02, 6, 7, 8, 9, 10, 11, 12.01, 12.02, 13, 14.01, 14.02, 14.03, 15, 16, 17, 18, 19, 20, 21, 31, 32, 33, 34, 35, 36.01, 36.02, 37.01, 37.02, 38, 39, 49, 50.01, 50.02, 50.03, 65.01, 65.02, 65.03, 65.04, 65.05, 66, 67, 101, 102, 103, 104.01, 104.02, 105, 106.01, 107,01, 107.02, 132.01, 132.02, 133.01, 133.02, 134.01, 134.02, 135,01, 135.02, 136.01, 136.02, 137, 138, 139, 140.01, 140.02, 141 and 142.

Sec. 12. District 11 is composed of that part of Har-

ris County included in census tracts 121, 122, 123, 124, 201, 202, 204, 205, 210, 211, 232, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 315, 317, 321, 322, 329, 330, 347, 349, 350, 351, 352, 353, 356, 357, 358, 359, 370 and 501.

Sec. 13. District 12 is composed of that part of Tarrant County included in census tracts 22, 23.01, 23.02, 24.01, 24.02, 25, 26, 27, 28, 29, 30, 40, 41, 42.01, 42.02, 43, 44, 45.01, 45.02, 45.03, 46.01, 46.02, 46.03, 46.04, 46.05, 47, 48.01, 48.02, 51, 52, 53, 54,01, 54.02, 55.01, 55.02, 55.03, 55.04, 56, 57.01, 57.02, 58, 59, 60.01, 60.02, 60.03, 61.01, 61.02, 62, 63, 64, 106.02, 108.01, 108.02, 108,03, 109, 110.01, 110.02, 111.01, 111.02, 112.01, 112.02, 113, 114, 115.01, 115.02, 115.03, 115.04, 130, 131, 216.01, 216.02, 216.03, 217.01, 217.02, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228 and 229.

Sec. 14. District 13 is composed of that part of Harris County included in census tracts 233, 237, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 354, 355, 360, 361, 362, 363, 364, 365, 366, 367, 417, 418, 419, 420, 422, 423, 424, 425, 426, 427, 432, 433, 434, 435, 436, 437, 438, 439, 445, 446, 448, 449, 450, 451, 452, 535, 536, 537, 538, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558 and 559.

Sec. 15. District 14 is composed of Blanco, Burnet, Caldwell, Hays and Travis Counties.

Sec. 16. District 15 is composed of that part of Harris County included in census tracts 125, 126, 206, 207, 208, 316, 401, 402, 403, 404, 405, 406, 407, 421, 440, 441, 442, 443, 444, 447, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 527, 528 and 529.

Sec. 17. District 16 is composed of that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 6.02, 7.01, 7.02, 8, 9, 10, 11.01, 11.02, 12, 13.01, 13.02, 14, 15.01, 15.02, 16, 22.01, 22.02, 23, 24, 25, 26, 27.01, 27.02, 28, 29, 30, 31.02, 33, 34, 35, 36, 37, 38, 39.01, 39.02, 76.04, 77, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82, 83, 84, 85, 90.01, 90.02, 91.01, 91.02, 115, 120, 121, 122.01, 122.02, 123, 124, 125, 126, 127, 128, 129, 131, 133, 175, 176.01, 176.02, 179, 180, 196, 197 and 198.

Sec. 18. District 17 is composed of Aransas, Brazoria, Calhoun, Galveston and Matagorda Counties, and that part of Harris County included in census tracts 368, 369, 373 and 374.

Sec. 19. District 18 is composed of Bastrop, Bell, DeWitt, Fayette, Goliad, Gonzales, Jackson, Karnes, Lavaca, Lee, Milam, Victoria and Williamson Counties.

Sec. 20. District 19 is composed of that part of Bexar County included in census tracts, 1,101, 1,102, 1,103, 1,104, 1,108, 1,109, 1,110, 1,201, 1,202, 1,205, 1,213, 1,214, 1,215, 1,216, 1,301, 1,302, 1,303, 1,304, 1,305, 1,306, 1,307, 1,308, 1,309, 1,310, 1,311, 1,312, 1,313, 1,314, 1,315, 1,316, 1,317, 1,318, 1,401, 1,402, 1,403, 1,404, 1,405, 1,406, 1,407, 1,408, 1,409, 1,410, 1,411, 1,412, 1,413, 1,414, 1,415, 1,416, 1,417, 1,418, 1,419, 1,501, 1,502, 1,503, 1,504, 1,505, 1,506, 1,507, 1,508, 1,509, 1,510, 1,511, 1,512, 1,513, 1,514, 1,515, 1,516, 1,517, 1,518, 1,519, 1,520, 1,521, 1,522, 1,602, 1,603, 1,604, 1,608, 1,609, 1,610, 1,611, 1,612, 1,620, 1,902, 1,903 and 1,904.

Sec. 21. District 20 is composed of Bee, Kenedy, Kleberg, Nueces, Refugio, San Patricio and Willacy Counties.

Sec. 22. District 21 is composed of Atascosa, Dimmit, Duval, Frio, Guadalupe, Jim Hogg, LaSalle, Live Oak, McMullen, Maverick, Medina, Starr, Webb, Wil-

son, Zapata and Zavala Counties, and that part of Bexar County included in census tracts, 1,203, 1,204, 1,206, 1,207, 1,208, 1,209, 1,210, 1,211, 1,212, 1,217, 1,218, 1,219, 1,613, 1,615, 1,617, 1,618, 1,619, 1,717, 1,718, 1,719, 1,720, 1,817, 1,821, 1,916 and 1,917.

Sec. 23. District 22 is composed of Bosque, Comanche, Cooke, Denton, Eastland, Erath, Hill, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Somervell, Stephens, Wise and Young Counties.

Sec. 24. District 23 is composed of that part of Dallas County included in census tracts 20, 32.02, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59.01, 59,02, 60.01, 60.02, 61, 62, 63.01, 63.02, 64, 65, 67, 68, 69, 86, 87.01, 87.02, 88, 89, 93.02, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111.01, 111.02, 112, 113, 114.01, 114.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165.01, 167.01 and 199.

Sec. 25. District 24 is composed of Brown, Coleman, Concho, Coryell, Hamilton, Lampasas, McCulloch, McLennan, Menard, Mills, Runnels, San Saba and Taylor Counties.

Sec. 26. District 25 is composed of Bandera, Brewster, Coke, Comal, Crane, Crockett, Culberson, Edwards, Gillespie, Glasscock, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney, Llano, Loving, Mason, Midland, Pecos, Presidio, Reagan, Real, Reeves, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, Uvalde, Val Verde, Ward and Winkler Counties.

Sec. 27. District 26 is composed of that part of Bexar County included in census tracts, 1,105, 1,106, 1,107, 1,601, 1,605, 1,606, 1,607, 1,616, 1,614, 1,701, 1,702, 1,703, 1,704, 1,705, 1,706, 1,707, 1,708, 1,709, 1,710, 1,711, 1,712, 1,713, 1,714, 1,715, 1,716, 1,801, 1,802, 1,803, 1,804, 1,805, 1,806, 1,807, 1,808, 1,809, 1,810, 1,811, 1,812,

1,813, 1,814, 1,815, 1,816, 1,818, 1,819, 1,820, 1,901, 1,905, 1,906, 1,907, 1,908, 1,909, 1,910, 1,911, 1,912, 1,913, 1,914 and 1,915.

Sec. 28. District 27 is composed of Brooks, Cameron, Hidalgo and Jim Wells Counties.

Sec. 29. District 28 is composed of Andrews, Borden, Cochran, Crosby, Dawson, Ector, Gaines, Garza, Lubbock, Lynn, Martin, Terry and Yoakum Counties.

Sec. 30. District 29 is composed of El Paso and Hudspeth Counties.

Sec. 31. District 30 is composed of Archer, Baylor, Briscoe, Callahan, Childress, Clay, Cottle, Dickens, Fisher, Floyd, Foard, Hale, Hall, Hardeman, Haskell, Howard, Jones, Kent, King, Knox, Mitchell, Motley, Nolan, Scurry, Shackelford, Stonewall, Throckmorton, Wichita and Wilbarger Counties.

Sec. 32. District 31 is composed of Armstrong, Bailey, Carson, Castro, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher and Wheeler Counties.

Sec. 33. The terms "census tract" and "census enumeration district," as used in this act, mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

Sec. 34.(a) As soon as possible after this act is filed with the secretary of state, the secretary of state shall transmit a copy of the act to the county clerk of each county in the state, to be filed as an official public record in the office of the county clerk. At the same time, the secretary of state shall also furnish to the county judge of each county which is divided into two or more senatorial districts or parts of two or more senatorial districts appropriate maps showing census tract, census enumeration district, or census block group lines to facilitate the identification of senatorial district boundaries.

The county judge shall present the maps to the commissioners court, to be used in making whatever changes are necessary in election precinct boundaries in order to comply with the prohibition in Subsection (b), Section 12, Texas Election Code (Article 2.04, Vernon's Texas Election Code), which reads in relevant part as follows:

"(b) No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor out of the parts of two or more justice precincts or commisisoners precincts; and no election precinct shall be formed out of two or more congressional districts or state senatorial districts or state representative districts, nor out of the parts of two or more such districts. . . . Subject to the provisions of the first sentence of this paragraph, no election precinct shall have resident therein less than fifty or more than two thousand voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in precincts in which voting machines have been adopted for use in accordance with Section 79 of this code, the maximum number of voters shall be three thousand."

(b) Although the time specified in Subsection (b) of Article 2.04 of the Texas Election Code, for making changes in election precint boundaries has passed, in order to make the apportionment districts adopted by the Legislative Redistricting Board effective for the next election year in compliance with the mandate of Section 28 of Article III of the Constitution of the State of Texas, the commissioners courts, within 30 days after the date the maps are mailed by the secretary of state as required by Subsection (a) of this section, shall make such changes in the boundaries of the election precincts of their respective counties as may be necessary to comply with the above quoted provision of Subsection (b) of Article 2.04 of the Texas Election Code.

Such changes in the election precinct boundaries shall become operative in the holding of elections on and after March 1, 1972, and registration of voters for voting at elections held during the 1972 voting year shall conform to the changes. Where changes in election precincts are necessary, the county tax assessor-collector as registrar of voters shall defer the issuance of registration certificates for voters residing in the affected areas until the changes have been made. The registrar is further directed to make all necessary corrections in the registration records for the voting period which begins on March 1, 1972, as provided in Section 48b, Texas Election Code, as added by Section 9, Chapter 827, Acts of the 62nd Legislature, Regular Session, 1971 (Article 5.16b, Vernon's Texas Election Code). Any and all acts required of any other state or county officer as a result of changes made in the election precincts as necessitated by this act may be delayed accordingly, but only for the period of time necessary to accomplish the acts required.

Sec. 35. The apportionment plan adopted by the Legislative Redistricting Board is effective for the elections, primary and general, for all senators to the 63rd Legislature, and continues in effect for succeeding legislatures. This apportionment plan does not affect the membership of the 62nd Legislature. If a vacancy occurs in the office of any senator of the 62nd Legislature and a special election to fill the vacancy becomes necessary, the election shall be held in the district as it existed before the effective date of this act.

Sec. 36. All boards, agencies, commissions, committees, and governing bodies created or existing under the laws of this state whose membership is based upon the senatorial districts of Texas shall conform their membership to the senatorial districts created hereunder.

WE, THE UNDERSIGNED, hereby acknowledge the foregoing instrument to be the act and deed of the Legislative Redistricting Board of Texas, executed on this 15th day of October A.D. 1971.

s/
CRAWFORD C. MARTIN, Chairman
Attorney General of Texas

s/
BEN BARNES
Lieutenant Governor of Texas

G. F. (GUS) MUTSCHER, Speaker
House of Representatives of Texas

BOB ARMSTRONG
Commissioner of the General Land Office of Texas

s/
ROBERT S. CALVERT
Comptroller of Public Accounts of Texas

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

Before me on this day personally appeared the above signed members of the Legislative Redistricting Board of Texas known to me to be the persons and officers whose names are subscribed to the foregoing instrument and acknowledged to me that they and each of them executed the same as the act and deed of the Legislative Redistricting Board of Texas.

Given under my hand and seal of office this 15th day of October A.D. 1971.

s/
JAMES R. REYNOLDS
Notary Public in and for Travis County, Texas

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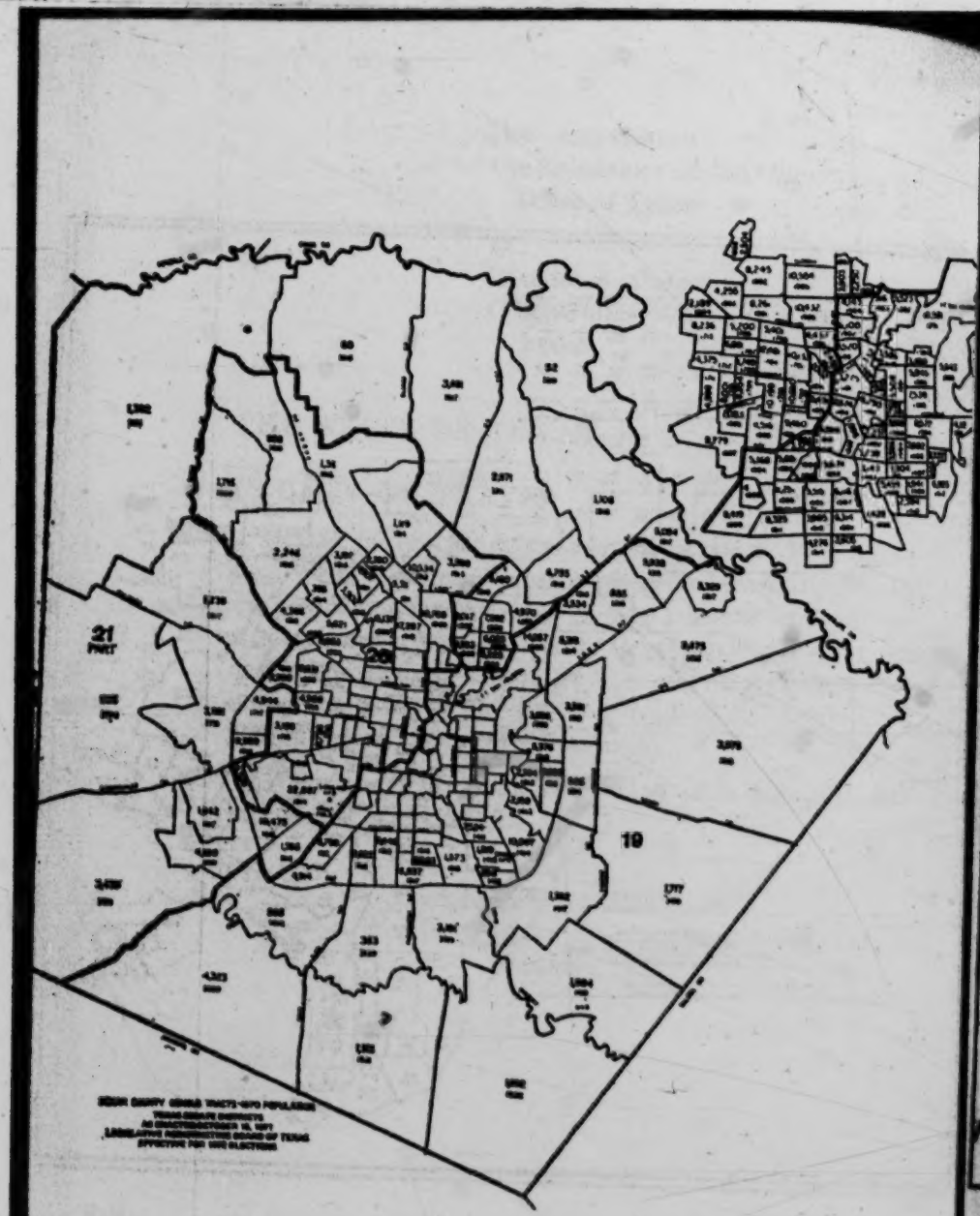

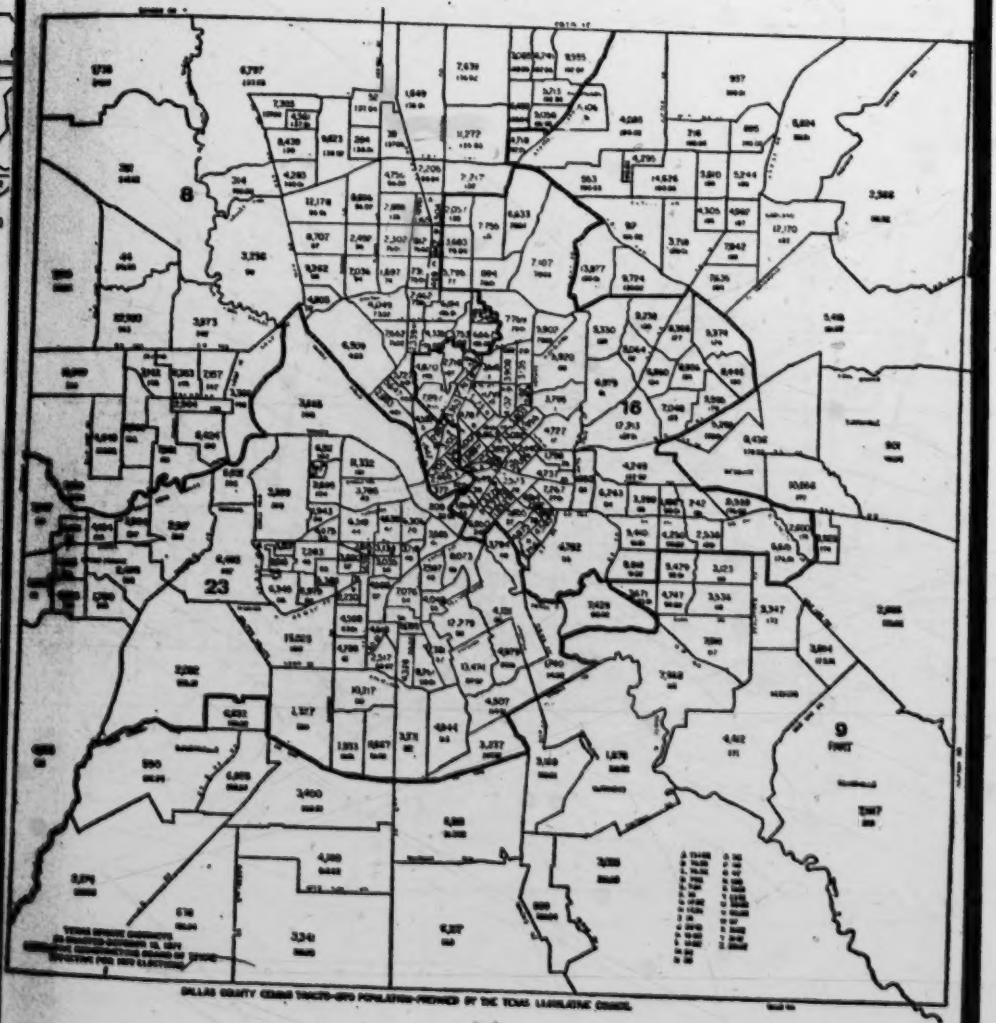
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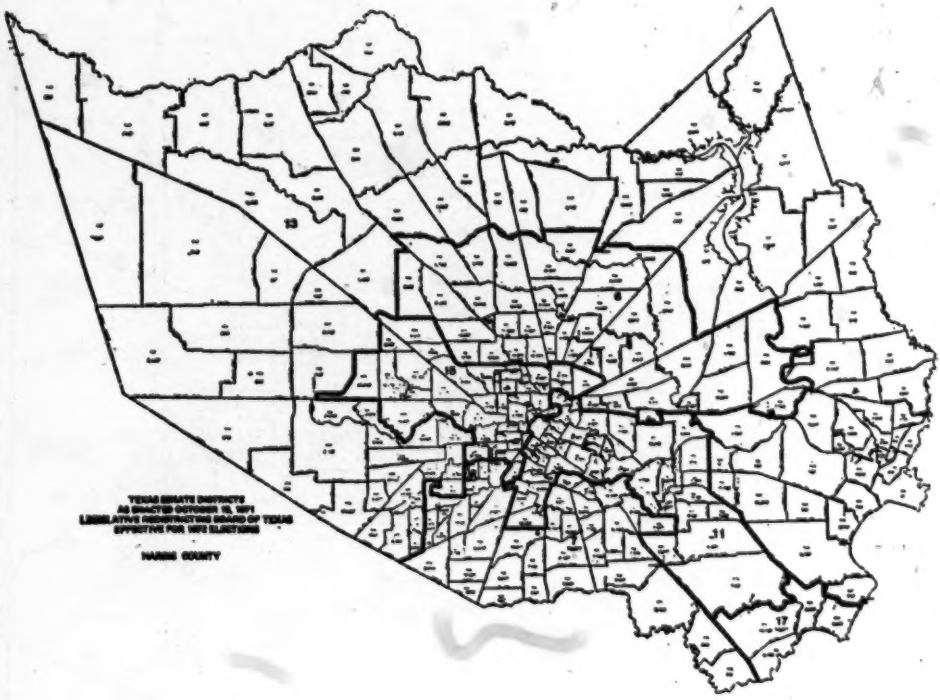
TEXAS SENATE DISTRICTS
AS ENACTED OCTOBER 13, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS
HARRIS COUNTY
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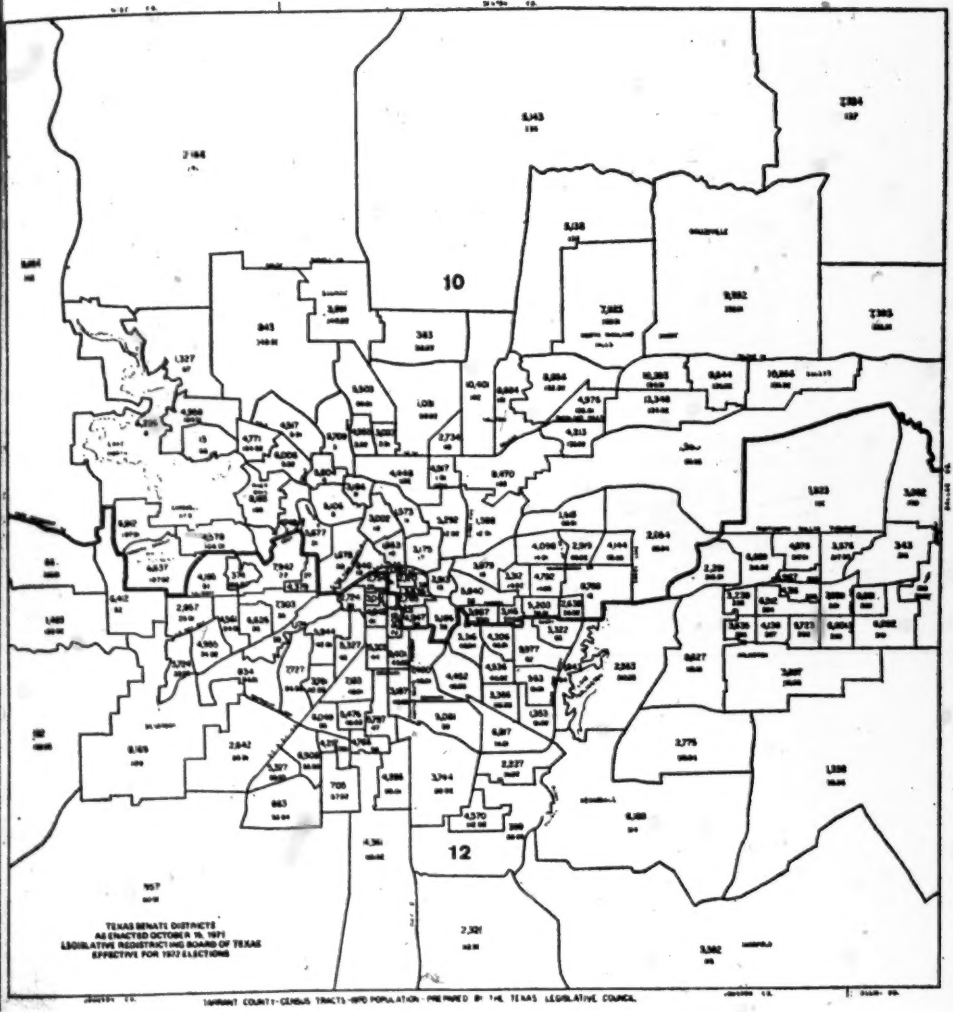
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TEXAS SENATE DISTRICTS
AS ENACTED OCTOBER 9, 10, 1971
LEGISLATIVE REDISTRICTING BOARD OF TEXAS
EFFECTIVE FOR 1972 ELECTIONS
TARRANT COUNTY-CENSUS TRACTS-1970 POPULATION-PREPARED BY THE TEXAS LEGISLATIVE COUNCIL

TEXAS SENATE DISTRICTS

AS ENACTED OCTOBER 15, 1971 BY THE LEGISLATIVE REDISTRICTING BOARD OF TEXAS

District		Total Population	Percent Deviation Over (Under)
1		369,539	2.3%
2		360,411	(.2%)
3		367,841	1.8%
4		361,144	(.01%)
5		364,194	.8%
6	(HARRIS)	353,448	(2.1%)
7	(HARRIS 302,083)	354,397	(1.9%)
8	(DALLAS)	355,361	(1.6%)
9	(DALLAS 258,657)	354,545	(1.8%)
10	(TARRANT)	358,138	(.8%)
11	(HARRIS)	354,342	(1.9%)
12	(TARRANT)	358,179	(.8%)
13	(HARRIS)	353,326	(2.2%)
14		359,323	(.5%)
15	(HARRIS)	354,218	(1.9%)
16	(DALLAS)	357,291	(1.1%)
17	(HARRIS 24,495)	357,265	(1.1%)
18		362,821	.5%
19	(BEXAR)	361,439	.1%
20		366,477	1.5%
21	(BEXAR 108,490)	367,791	1.8%
22		364,115	.8%
23	(DALLAS)	356,012	(1.4%)
24		369,417	2.3%
25		367,975	1.9%
26	(BEXAR)	360,531	(.2%)
27		362,940	.5%
28		365,600	1.2%
29		361,683	.1%
30		368,807	2.1%
31		368,160	1.9%
	TOTAL	11,196,730	

EXHIBIT E

TEXAS CONSTITUTION

Article III, Section 25, Senatorial Districts

Sec. 25. The State shall be divided into Senatorial Districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one Senator; and no single county shall be entitled to more than one Senator.

INTERPRETATIVE COMMENTARY

As noted here senatorial districts are divided according to the number of qualified electors, hence representation in the senate is apportioned upon a basis of the number of qualified electors, rather than upon a basis of population as in the House of Representatives.

This plan of apportionment in the Senate was included in the Constitution of 1845 in Article III, Section 31. Qualified electors at that time were free male citizens of twenty-one years of age (Indians not taxed and Africans and their descendants excepted). Such a plan was no doubt adopted to aid in giving greater senatorial representation to the sparsely settled areas of the state, thus effecting a balance in the senate between such areas and the more thickly populated areas, which would not be the case if apportionment was carried out on a population or free inhabitant basis (Indians not taxed and Africans and their descendants excluded) as was used in apportioning Representatives.

This basis of representation has been carried on in all later constitutions including that of 1876, although today when qualified electors are in general all citizens of twenty-one years, the distinction as to representation is not of sufficient importance to have much validity, for representation based on qualified electors is about the same proportionately as represenation based on population, except in certain counties having a large number of persons who do not qualify as electors through failure to pay the poll tax.

The requirement that the districts are to be of contiguous territory is designed to protect against gerrymandering of districts; and that providing that no county can have more than one senator protects rural and small town people who did not want to lose

control of the legislature to the more thickly populated cities. It results, of course, in making populous cities with a large number of qualified electors underrepresented.

Article III, Section 26, Apportionment of Members of House of Representatives

Sec. 26. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

INTERPRETATIVE COMMENTARY

As distinguished from the senate, representation in the house is apportioned among the counties according to the total population; the unit of representation used as a basis for the formulation of districts and the allotment of members being the number of inhabitants divided by the number of representatives. The basis of apportionment, then, is the population of the state divided by the membership of the house which is 150.

The constitutions of Texas have, from the beginning, apportioned representation in the house on inhabitants or population, although some of the earlier constitutions provided that free or slave Ne-

groes and Indians not taxed were not to be counted in determining such apportionment.

Apportionment, as provided by Section 26, is designed to assure equality of representation among the population of the state, a fundamental principle of representative government.

This principle is carried out in provisions permitting a county having sufficient population to have more than one representative. At such time it is made a separate district. Moreover, if a county does not have the required population it must be joined to a contiguous county to form a representative district; and further, in cases where a county has a surplus of population, enough for one or more representatives, but not for another, it may be joined with a contiguous county or counties in a legislative district and be permitted to elect a flotorial representative as a means of providing representation for the extra population.

Despite the fact that equality of representation is the rule, a constitutional amendment violating this principle was adopted in 1936. This amendment had the declared purpose of restricting representation from the larger cities. It did so by limiting to seven the number of representatives from any one county unless the population exceeds 700,000 in which event one additional representative is allowed for each 100,000.

This amendment shows the continuation of the old rivalry between rural and urban areas, and is a discrimination in favor of the former. As such, it aids in permitting the rural areas to maintain their supremacy in the House of Representatives.*

Article III, Section 28, Time for Apportionment; Apportionment by Legislative Redistricting Board

Sec. 28. The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts, agreeable to the provisions of Sections 25, 26, and 26-a of this Article. In the event

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*Note—the provision referred to immediately above is article 26a. It is not reproduced in this appendix because clearly in violation of this Court's rulings. It is not pertinent to the present case.

the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said Board shall assemble in the City of Austin within ninety (90) days after the final adjournment of such regular session. The Board shall, within sixty (60) days after assembling, apportion the state into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary. Such apportionment shall be in writing and signed by three (3) or more of the members of the Board duly acknowledged as the act and deed of such Board, and, when so executed and filed with the Secretary of State, shall have force and effect of law. Such apportionment shall become effective at the next succeeding statewide general election. The Supreme Court of Texas shall have jurisdiction to compel such Commission to perform its duties in accordance with the provisions of this section by writ of mandamus or other extraordinary writs conformable to the usages of law. The Legislature shall provide necessary funds for clerical and technical aid and for other expenses incidental to the work of the Board, and the Lieutenant Governor and the Speaker of the House of Representatives shall be entitled to receive per diem and travel expense during the Board's session in the same manner and amount as they would receive while attending a special session of the Legislature. This amendment shall become effective January 1, 1951. As amended Nov. 2, 1948.

INTERPRETATIVE COMMENTARY

In line with the principle of equality of representation of all voters of the state, it is required that the legislature, after the publication of each United States decennial census, reapportion its membership agreeably to the provisions of Article III, Sections 25, 26 and 26a.

It can readily be seen that if such reapportionment is not carried out, shifts in populations will make certain portions of the state over-represented and others underrepresented in the senate and the house, and a person's vote and political power will not have as much weight in one part of the state as in another.

Although the Constitution of 1876 made it obligatory upon the legislature to reapportion after each decennial census, as of 1948 there had been no reapportionment since 1921, and it would seem that there was no method to force the legislature to reapportion even though it violated a constitutional duty, for under the doctrine of separation of powers, the courts cannot interfere to compel the legislature to perform a legislative duty.

To remedy this situation, Section 28 was amended in 1948 so that periodic reapportioning could be assured. It was provided that should the legislature fail to reapportion at its first regular session after the publication of the decennial census, it must be done by the Legislative Redistricting Board of Texas.

This Board, an ex officio body, is composed of the Lieutenant Governor, the Speak of the House of Representatives, the Attorney General, the Land Commisisoner, and the State Comptroller. It is required to meet sixty days after the adjournment of the legislature which failed to reapportion, and by majority vote redistrict the state into senatorial and representative districts. When such apportionment is executed and filed with the Secretary of State, it has the force and effect of law.

In order to compel action by the Board so that it cannot escape performance of its duty, jurisdiction is given to the Supreme Court of Texas to force it to perform its duties in accordance with the provisions of this section.

Preston SMITH, Governor of the State of Texas, et al., Appellants,

v.

Tom CRADDICK, et al., Appellees.

No. B-2932.

Supreme Court of Texas.

Sept. 16, 1971.

REAVLEY, Justice.

The appellees (Tom Craddick, Robert L. Monaghan, George Willeford, and James L. Kent) as a member of the Texas Legislature, the Republican County Chairman of Midland County, the Republican State Chairman, and as qualified voters, brought this suit as a class action on behalf of all voters of Texas to obtain declaration of the unconstitutionality of House Bill No. 783, 62nd Legislature, Regular Session, 1971,[1] and to enjoin the appellants (Preston Smith, Crawford Martin, Martin Dies, Jr., Elmer Baum, Rosenelle Cherry and Barbara Culver) who hold the offices of Governor and Secretary of State of Texas, Chairman of the State Democratic Executive Committee, County Clerk and County Judge of Midland County, from acting to conduct any election procedure pursuant to that House Bill No. 783. The district court entered its final judgment on August 10, 1971, declaring the statute unconstitutional and permanently enjoining the Secretary of State from conducting elections thereunder. The appellants filed their appeal directly to this court pursuant to Art. 1738a, Vernon's Ann.Civ.St. and Rule 499a, Texas Rules of Civil Procedure; and their motion to advance

[1]Chapter 981, pg. 2974 of Vernon's Texas Session Law Service, Laws 1971, 62nd Legislature, Art. 195a-3, Secs. 1-5, Vernon's Ann.Civ.St.

the cause filed on September 3 was granted and the cause was submitted on September 9.

By the statute in question the Legislature has redrawn the representative districts of the state from which members of the House of Representatives of the Texas Legislature are elected. The statute is attacked as violating Section 26, Article III of the Texas Constitution, Vernon's Ann.St. The constitutionality of this redistricting statute is the only question presented to us by the briefs and record. Furthermore, it is the only question over which we have jurisdiction in the direct appeal. State v. Spartan's Industries, Inc., 447 S.W.2d 407 (Tex.1969).

Article III, Section 26 of the Texas Constitution has provided since 1876 as follows:

> "The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties."

Representation in the House of Representatives is thereby apportioned among the counties of the state

according to population. If the population of a county is so small as not to entitle that county to one representative, two or more contiguous *counties* may be joined in a separate district. When one county has a population which exceeds that which entitles it to one or more representatives, that *county* is to be apportioned to what it is entitled, and the *county* may be joined with contiguous counties for the district representative to which the surplus population entitles it. No restriction is seen in this language to prevent drawing district lines within a single county.

The Legislature met the constitutional requirements from 1875 until 1966 in that no county was divided to form a representative district across the county line. Then came the Kilgarlin case in which the three judge federal court struck the flotorial representative districts of the Texas statute then in effect (Kilgarlin v. Martin, 252 F.Supp. 404, S.D.Tex. 1966) and the Supreme Court held that the population variation between the districts required further justification (Kilgarlin v. Hill, 386 U.S. 120, 87 S.Ct. 820, 17 L.Ed.2d 771, 1967). These decisions followed the decisions of the United States Supreme Court holding that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires substantially equal legislative representation for all citizens of a state. Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). *Cf.* Hadley v. Junior College District, 397 U.S. 50, 90 S.Ct. 791, 25 L.Ed.2d 45 (1970); Kirkpatrick v. Preisler, 394 U.S. 526 89 S.Ct. 1225, 22 L.Ed.2d 519 (1969); Avery v. Midland County, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45 (1968).

The requirement of the United States Constitution

takes precedence and any inconsistency therewith in the Texas Constitution is thereby vitiated. Whatever Section 26 of Article III provides, there must be equal representation to accord with the holdings of the federal courts. The paramount consideration is the variation, per representative, between the population of the various districts. This variation is usually computed by beginning with the ideal or average district population (in Texas with a 1970 population of 11,196,730 and 150 representatives, that ideal is 74,645), figuring the percent by which the district of the smallest population is over represented and the percent by which the district of the largest population is under-represented, and then adding the two percentage figures together. In Swann v. Adams, 385 U.S. 440, 87 S.Ct. 569, 17 L. Ed.2d 501 (1967) the Florida senate districts under attack ranged from 15.09% overrepresentation to 10.56% underrepresentation, and the representative districts ranged from 18.28% overrepresentation to 15.27% underrepresentation. The variation or deviation was thus 25.65% in the senate districts and 33.55% in the representative districts. These variations were held to render the Florida plan unconstitutional in the absence of acceptable reasons for the variances. The Texas representative districts considered in the Kilgarlin case, supra, varied from 14.84% overrepresentation to 11.64% underrepresentation. The U. S. Supreme Court held that these variances invalidated the apportionment plan unless satisfactorily justified. A reading of the opinions of the lower court and the Supreme Court leaves us with the impression that justification of those variances would be extremely difficult to make to the satisfaction of the Supreme Court.

Another problem is the flotorial district. There is no federal objection to a district that includes several counties, but if the district includes within its boun-

daries the boundaries of another district or districts, an impermissible population disparity is likely. The larger district may be tested against the ideal as to population variation on the basis of only the member or members elected directly from that particular district, in which case the variation would probably be substantial. Furthermore, the voters who reside within that portion of the flotorial district which composes the encompassed district vote for more than one representative, and the effect is to debase the votes of others who reside in the flotorial district outside the encompassed district. Kilgarlin v. Martin, 252 F.Supp. 404, 418.

Primary considerations of the Fourteenth Amendment of the United States Constitution as laid down by the federal courts have the following effect upon the Texas Constitution (Art. III, Section 26):

1. Section 26 requires that apportionment be by county and when two or more counties are required to make up a district of proper population, the district lines shall follow county boundaries and the counties shall be contiguous. A county not entitled to its own representative must be joined to contiguous counties so as to achieve a district with the population total entitled to one representative. The only impairment of this mandate is that a county may be divided if to do so is necessary in order to comply with the equal population requirement of the Fourteenth Amendment. We are not to be understood as proscribing multi-member districts within a single county; in the absence of some discriminatory effect neither state nor federal constitution presents any obstacle there. Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965); cf. Connor v. Johnson, 402 U.S. 690, 91 S.Ct. 1760, 29 L. Ed.2d 268 (1971).

2. The first clause of the provisio dictates that a county must be formed into a separate district if it has sufficient population for one representative. This would be effective only so long as the population of that county is within permissible limits of variation. If the population of the county is slightly under or over the ideal population figure, the state constitution requires that the county constitute a separate district.

3. The final clause of Section 26 dictates that, for any surplus population, the *county* shall be joined with contiguous county or counties in a flotorial district. This dictate is nullified.

4. With the nullification of the dictate relative to use of the surplus population (less than enough for a district) of a county which already has one or more representatives allocated thereto, it becomes permissible to join a portion of that county (in which the surplus population reside and which is not included in another district within that county) with contiguous area of another county to form a district. For example, if a county has 100,000 population, and if a district of 75,000 population is formed wholly within that county, the *county* is given its district, and the area wherein the 25,000 live may be joined to a contiguous area.

5. It is still required that a county receive the member or members to which that county's own population is entitled when the ideal district population is substantially equalled or is exceeded. No exception to this requirement is made by what is said in 4. above. Again, all requirements of Section 26 are inferior to the necessity of complying with the Equal Protection Clause.

The district plan enacted by the 62nd Legislature in 1971, House Bill 783, cuts the boundaries of 33 counties. Forty-three districts include only a portion of one

or more counties with the contiguous county or counties. Eighteen counties with less than 74,645 population were divided, and portions of each of those counties were placed in two or more districts. Although Grayson County has a population of 83,225, that *county* was not apportioned a representative as required by Section 26, but a portion of the county was placed in district 14 with Fannin County, and the remaining portion of Grayson was placed in district 60 with counties to the west.

[1] Appellants offered no evidence to establish that the wholesale cutting of county lines, as provided in House Bill 783, was either required or justified to comply with the one-man, one-vote decisions. The burden is on one attacking an act to establish its invalidity. Texas National Guard Armory Board v. McCraw, 132 Tex. 613, 126 S.W.2d 627 (1939); Lombardo v. City of Dallas, 124 Tex. 1, 73 S.W.2d 475, (1934). Appellees proved conclusively that this statute fails to do what is required by the constitution in those respects discussed in paragraphs 1. and 5. above. No presumption of validity remained in the face of that showing. If these districting requirements were excused by the requirements of equal representation, the appellants had the burden of presenting that evidence. They presented none.

[2] Giving all weight and presumption to favor the act of the Legislature, this statute clearly violates the constitution. This court must therefore give effect to the language of the constitution without regard to the consequences. Cramer v. Sheppard, 140 Tex. 271, 167 S.W.2d 147 (1942). The statute must be declared invalid in its entirety. See Smith v. Patterson, 111 Tex. 535, 242 S.W. 749 (1922).

[3] The Attorney General in his brief for appellants puts our choice in these words:

"The Court in the instant case is faced with the complex problem of deciding whether to invalidate an extremely complex legislative enactment or making the determination that Reynolds v. Sims and the numerous ensuing cases in this area have rendered the restrictive provisions in Section 26 of Article III of the Constitution of Texas as no longer operable and binding upon the Legislature of the State of Texas in redistricting the House of Representatives or Senate."

We understand some of the difficulties of every undertaking to redictrict this state. However, this court may not abrogate any provision of the constitution for the sake of simplicity. The federal requirement of equal representation clearly has not nullified Section 26 of Article III in its entirety. Then certainly this court may not choose to do so.

[4] The appellees filed a motion to dismiss this appeal for want of jurisdiction, their contention being that a question of fact existed in the trial court. This record established conclusively the unconstitutionality of the statute and presented to the trial court and to this court no contested issue of fact but only a question of law. Rule 499a(c), T.R.C.P.; Railroad Commission v. Sterling Oil & Refining Co., 147 Tex. 547, 218 S.W. 2d 415 (1949). The motion to dismiss is overruled.

The judgment of the trial court is affirmed. No motion for rehearing may be filed in this cause.

DANIEL, J., not sitting.

Oscar H. MAUZY, Relator,

v.

The LEGISLATIVE REDISTRICTING BOARD et al, Respondents.

No. B-2955.

Supreme Court of Texas.

Sept. 27, 1971.

CALVERT, Chief Justice.

Sec. 28, Art. III, Constitution of Texas, Vernon's Ann.St. provides:

"Sec. 28. The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts, agreeable to the provisions of Sections 25, 26, and 26-a of this Article. In the event the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said Board shall assemble in the City of Austin within ninety (90) days after the final adjournment of such regular session. The Board shall, within sixty (60) days after assembling, apportion the state into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary. * * * The Supreme Court of Texas shall have jurisdiction to compel such Commission to perform its duties in accordance

with the provisions of this section by writ of mandamus or other extraordinary writs conformable to the usages of law. * * *"

The section in its present form was adopted as an amendment to the constitution in 1948.

The regular session of the 62nd Legislature, which convened January 12, 1971 and adjourned May 31, 1971, enacted a statute, ch. 981, p. 2974 (Art. 195a-3, §§ 1-5, Vernon's Ann.Civ.St.), apportioning the state into representative districts, but it failed to enact a statute apportioning the state into senatorial districts. The officials constituting the Legislative Redistricting Board as provided in the constitution met formally for the first time on August 24, 1971 for the announced purpose of apportioning the state into senatorial districts.

On August 10, 1971, the District Court for the 53rd Judicial District, Travis County, declared the representative district apportionment act invalid, and a direct appeal was taken to this court. On September 16 we affirmed the trial court's judgment. See Smith, et al. v. Craddick et al., 471 S.W.2d 375 (Tex.Sup.1971).

Following our action in Smith v. Craddick, relator, Honorable Oscar H. Mauzy, through counsel, petitioned the Legislative Redistricting Board to proceed to apportion the state into representative as well as senatorial districts. The Board declined, stating in a formal resolution as its reason for so doing that it was the Board's official position that it had no jurisdiction to apportion for representative districts inasmuch as the Legislature had enacted a statute apportioning for such districts, and the invalidation of the statute by judicial action did not serve to confer jurisdiction on the Board. As a consequence of that action, relator insti-

tuted this direct proceeding in this court seeking, primarily, a writ of mandamus to compel the Board to redistrict for representative districts.

On September 17 we authorized intervention in the proceeding by Honorable Fred Head, a member of the House of Representatives, who had been asserting in a suit in the trial court, and wished to assert here, that the 1970 decennial census had not been "published" before the regular session of the 62nd Legislature convened; that the regular session of the 63rd Legislature which convenes the second Tuesday in January, 1973, will, therefore, be the "first regular session" *after*[1] publication of the census, and only it has jurisdiction under the constitution to redistrict; that since the regular session of the 62nd Legislature had no jurisdiction to redistrict, the Board has none.

The contention of intervenor should be considered first; if it is sound, all other issues in the case are moot and immaterial. However, we do not think the contention is sound.

[1] Admittedly, the language of the opening sentence of Sec. 28, Art. III, quoted above, is subject to the interpretation intervenor places upon it; but when we consider the object and purpose of Sec. 28, in the light of its history, we do not think the interpretation is a reasonable one. That object and purpose obviously was to get on with the job of legislative redistricting which had been neglected or purposely avoided for more than twenty-five years. Intervenor's interpretation would require interpolation of the word "convened" into the constitutional provision and he would thus interpret it as saying that the Legislature shall apportion into districts "at its first regular session

[1]Emphasis ours throughout unless otherwise indicated.

[convened] after publication of each United States decennial census. * * *" The law permits the interpolation of words into a constitutional or statutory provision when necessary to achieve clear intent, Sweeny Hospital District v. Carr, 378 S.W.2d 40, at 47 (Tex. Sup.1964); Halbert v. San Saba Springs Land & Live-Stock Ass'n, 89 Tex. 230, 34 S.W. 639, 49 L.R.A. 193 (1896); but interpolation should not be resorted to when to permit it will defeat overriding intent.

[2] We are convinced that the overriding intent of the people in adopting Sec. 28 was to permit apportionment of the state into legislative districts at the regular session of the Legislature which is convened in January following the taking of the census, if publication is either before convening or during the session. We recognize that this interpretation can mean that on some occasions the Legislature may have only a few weeks, or even only a few days, in which to put the finishing touches on a redistricting bill, with jurisdiction in the Board to complete the task in the event of legislative failure; but the other side of the coin can be a two year delay in making legislative redistricting effective if redistricting legislation must be postponed until a second regular session when census publication occurs a few days or a few weeks after convening of the first regular session. Having concluded that intervenor is wrong in his basic position, we find it unnecessary to decide when "publication" of the 1970 census actually occurred, although we note in passing that intervenor's counsel stated in oral argument that by February 18, 1971, the Legislature had been furnished all census figures necessary to apportion the state into legislative districts.

[3] The next issue which commands our attention is whether enactment of the invalid statute attempting

apportionment of the state into representative districts robs the Board of jurisdiction to apportion the state into such districts. We hold that it does not.

[4] In support of its position that it does, the Board cites, particularly, State ex rel. Lein v. Sathre, 113 N.W.2d 679 (N.D.Sup.1962) and Yorty v. Anderson, 60 Cal. 2d 312, 33 Cal.Rptr. 97, 384 P.2d 417 (1963). Decisions of courts of other jurisdictions, even if based upon identical facts, are no more than persuasive, and they are persuasive only to the extent that their reasoning is regarded as logical. State v. Sathre is obviously inapposite. It appears from the opinion in the case that North Dakota, like Texas, has provided in its constitution for a board or commission to apportion the state into legislative districts if the legislature fails to do so at its first regular session after each decennial census. The board is required to make its apportionment within ninety days after adjournment of the legislative session. The legislature failed to apportion and the board proceeded to perform its duty. The supreme court declared the apportionment invalid, and, in response to an argument that the ninety day period having expired and there was no agency having authority to apportion further, the court held that the legislature had continuing authority to apportion into legislative districts. That is not our question.

The decision of the Supreme Court of California in Yorty v. Anderson is based upon a state of facts more nearly like the facts in this case. At the time of the *Yorty* decision, Sec. 6 of Art. IV of the California Constitution provided that the legislature should, at its first regular session following each decennial census, reapportion the state into legislative districts on the basis of equal population, but that in the formation of senatorial districts no county, or city and county,

should contain more than one senatorial district. Provision was made for reapportionment by a Reapportionment Commission if the legislature should "fail to reapportion the assembly and senatorial districts." Although the legislature had enacted a legislative apportionment law, suit was filed to compel the commission to reapportion senatorial districts on the theory that the constitutional provision limiting any one county to one senatorial district violated the Equal Protection Clause of the federal constitution. The court held that the commission had no authority to act, even if the provision of Sec. 6 and the legislative enactment were invalid, because the legislature had "acted," whether validly or invalidly.

[5, 6] The Texas constitutional provision differs from the California constitutional provision in that the Texas Legislature is directed to "apportion the state" into legislative districts "agreeable to the provisions of Sections 25, 26, and 26a of this Article [Art. III]." The Board is created to make apportionment in the event the Legislature shall "fail to make *such* apportionment." Finally, the Board is directed to apportion the state into such legislative districts "as the failure of action of such Legislature may make necessary." Now, obviously, when all of the quoted provisions are harmonized, the failure to make "such apportionment" referred to in the second quoted provision, and the "failure of action" referred to in the third quoted provision, relate back to the requirement that the apportionment by the Legislature be "agreeable to Sections 25, 26, and 26a" of Article III. It was precisely because the apportionment act of the 62nd Legislature was not agreeable to Sec. 26 that it was invalidated by this court in Smith v. Craddick, supra. We hold that upon the failure of the Legislature to apportion rep-

resentative districts agreeable to Sec. 26 of Art. III of the constitution, the duty to apportion for such districts devolved upon the Board.

We could rest our decision of the question last discussed on the very narrow ground just stated. We deliberately do not do so, however, preferring to write with broader sweep. We do not agree with the California court's conclusion that the Board's jurisdiction is conditioned upon the Legislature's "failure to act." That is not what our constitution says as we read it. By the constitution the Board's jurisdiction to apportion is conditioned upon the Legislature's failure "to make such apportionment." An apportionment which is invalid, for whatever reason, is no apportionment; and the Board's duty to proceed with apportioning the state into representative districts accrued when the regular session adjourned on May 31, 1971 without having enacted a valid apportionment statute.

Inasmuch as we have held that the Board must apportion, we do not have before us and may not decide whether a special session of the Leigslature could apportion if the power did not reside in the Board or if the Board's own scheme were declared invalid.

[7] The regular session of the 62nd Legislature amended Art. 29d, Vernon's Texas Civil Statutes, to read, in part:

"Section 1. Neither the state nor any political subdivision or agency thereof except the Legislature shall ever officially recognize or act upon any report or publication, in whatever form, of any Federal Decennial Census, either as a whole or as to any part thereof, before the first day of September of the year immediately following the calendar year during which such census was taken."

If this statute was intended to prevent action by the Legislative Redistricting Board before September first of the year referred to on the basis of census figures theretofore published, it is ineffective in so far as it conflicts with Sec. 28, Art. III of the constitution as we have interpreted it.

[8, 9] Relator requests that we direct the Board to apportion only into single-member districts as opposed to multi-member districts. We deny the request. Within certain constitutional limitations, apportionment involves the judgment and discretion of the Board. It is well settled that mandamus never lies to control official discretion of a state board. Industrial Accident Board v. Glenn, 144 Tex. 378, 190 S.W.2d 805 (1945); McDowell v. Hightower, 111 Tex. 585, 242 S.W. 753, at 754 (1922); Matthaei v. Clark, 110 Tex. 114, 216 S.W. 856, at 862 (1919). The manner in which the Board apportions the state into new districts is entirely within the judgment and discretion of the Board, so long as it acts within the limitations imposed by the Constitutions of the State of Texas and of the United States. The applicable state and federal constitutional guidelines are discussed in this court's opinion in Smith v. Craddick, supra. It is unnecessary to repeat them here. In holding that "a county may be divided if to do so is necessary in order to comply with the equal population requirement of the Fourteenth Amendment," we stated in *Craddick* that this court was not to be understood as proscribing multi-member districts within a single county in the absence of some discriminatory effect.

In exercising its discretion as to whether to create multi-member districts within a single county, we must assume that the Board will give careful consideration to the question of whether or not the creation of any particular multi-member district would result in dis-

crimination by minimizing the voting strength of any political or racial elements of the voting population. See Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858, at 1869, 29 L.Ed.2d 363 (1971).

[10, 11] One other matter deserves brief attention. Relator has requested this court to (1) "issue a declaratory judgment declaring the 1967 apportionment along with its amendments of 1969 of the Texas House of Representatives unconstitutional"; (2) "enjoin the election officials of the State of Texas from holding any elections under any apportionment scheme" until this court "has passed upon the constitutionality of said scheme"; and (3) "maintain jurisdiction of the parties on [sic] the subject matter of this case until the final determination can be made as to the constitutionality of any apportionment scheme promulgated." Relator asserts that jurisdiction to grant the relief sought is found in that provision of Sec. 28, Art. III authorizing the court to compel the Board to perform is duties "by writ of mandamus *or other extraordinary writs* conformable to the usages of law. * * *" Relator reads too much into the phrase "or other extraordinary writs." It seems far more reasonable and logical to hold that the phrase refers to writs of procedendo, certiorari, prohibition, quo warranto, and other such common law writs rather than that we should enter upon such innovative courses of procedure as those suggested. We do so hold.

A writ of mandamus will issue to the Legislative Redistricting Board of Texas as sought. No motion for rehearing will be entertained.

DANIEL, J., not participating.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CIVIL ACTION NO. A-71-CA-142
CURTIS GRAVES, ET AL.
vs.
BEN BARNES, ET AL.

CIVIL ACTION NO. A-71-CA-143
DIANA REGESTER, ET AL.
vs.
BOB BULLOCK, ET AL.

CIVIL ACTION NO. A-71-CA-144
JOHNNY MARIOTT, ET AL.
vs.
PRESTON SMITH, ET AL.

CIVIL ACTION NO. A-71-CA-145
VAN HENRY ARCHER, JR., ET AL.
vs.
PRESTON SMITH, ET AL.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that VAN HENRY ARCHER, JR., individually and as Chairman of the Bexar County Republican Party, M. O. TURNER, MRS. LOIS WHITE, RICHARDSON B. GILL, MRS. MARY LOUISE PINO, and MRS. MARY MARTIN JACKSON, Plaintiffs in Civil Action No. A-71-CA-145, hereby appeal to the Supreme Court of the United States from that part of the final judgment denying relief to Plaintiffs, ARCHER, ET AL., on January 28, 1972. Said appeal being directed to the Court's

judgment denying said Plaintiffs the relief they sought in having the Texas Senatorial Apportionment Plan adopted by the Texas Legislative Redistricting Board declared unconstitutional, and to the adoption of the Senatorial Reapportionment Plan presented by Plaintiffs.

This appeal is taken pursuant to 28 U.S.C., Sec. 1253, and/or 28 U.S.C., 2101(b).

NATHAN W. EASON

J. DOUGLAS MCGUIRE
400 Alamo National Building
San Antonio, Texas 78205
Attorneys for Van Henry Archer, Jr., et al.

CERTIFICATE OF SERVICE

On this, the 24th day of February, 1972, a copy of the foregoing Notice of Appeal to the Supreme Court of the United States was forwarded to all counsel of record in the manner prescribed by Rule 33 of the United States Supreme Court.

NATHAN W. EASON

SUPREME COURT OF THE UNITED STATES

NO. A-795

CURTIS GRAVES ET AL.
v.
BEN BARNES, ET AL.

DIANA REGESTER, ET AL.
v.
BOB BULLOCK, ET AL.

JOHNNY MARIOTT, ET AL.
v.
PRESTON SMITH ET AL.

VAN HENRY ARCHER, JR.
v.
PRESTON SMITH ET AL.

[February 7, 1972]

APPLICATION FOR A STAY OF A JUDGMENT OF A THREE-JUDGE DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MR. JUSTICE POWELL, Circuit Justice.

This is an application for a stay of the judgment of a three-judge court sitting in the Western District of Texas. The court's decision covers issues raised in four consolidated actions. The principal issues were as follows:

1. In *Graves v. Barnes,* plaintiffs challenged the

State's reapportionment plan for the senatorial districts in Harris County (Houston) on the ground that they were racially gerrymandered.

2. In *Regester v. Bullock,* the State's reapportionment plan for the Texas House of Representatives was challenged on the grounds of population deviations from the one-man, one-vote requirement, and on the impermissibility of use of multi-member districts in the metropolitan communities.

3. In *Mariott v. Smith,* the House plan provision calling for a multi-member district for Dallas County was challenged.

4. In *Archer v. Smith,* a generally similar attack was levelled against the use of multi-member districting in Bexar County (San Antonio).

The four cases were consolidated and tried by a single three-judge panel. After full pretrial discovery, during which over 2,000 pages of depositions were taken, the District Court heard testimony at a three-and-one-half day hearing. The extensive *per curiam* opinion, and the concurring and dissenting opinions, which were handed down after some three weeks of deliberation, reflect a careful and exhaustive consideration of the issues in light of the facts as developed. The court's conclusions, in substance, were as follows:

(a) The Senate redistricting plan, as promulgated by the Texas Legislative Redistricting Board, was approved.

(b) The House redistricting plan was held violative of the Equal Protection Clause because of population deviations from equality of representation. But, in an exercise of judicial restraint, the court suspended its decision in this respect for the purpose of affording

the Legislature of Texas an opportunity to adopt a new and constitutional plan. Meanwhile, the forthcoming election may be held under the plan found to be deficient.

(c) The multi-member district plans for Dallas and Bexar Counties were found to be unconstitutional under the standard prescribed by this Court in *Fortson v. Dorsey,* 379 U. S. 433, 438-39 (1965); *Burns v. Richardson,* 384 U. S. 73, 88 (1966); and *Whitcomb v. Chavis,* 403 U. S. 124, 143 (1971). The three-judge court found from the evidence that these multi-member district plans would operate to minimize or cancel out the voting strength of racial minority elements of the voting population, and ordered the implementation of a plan calling for single-member districts for Dallas and Bexar Counties. The State offered no plan for single-member districts for these counties, and the court was compelled to draft its own plan. To minimize the disruptive impact of its ruling the court ordered that the State's requirement that candidates run from the district of their residence be abated for the forthcoming election. A candidate residing anywhere within the county, therefore, may run for election from any district in the county.

(d) The evidence with respect to nine other metropolitan multi-member districts was found insufficient to warrant treatment similar to that required for Dallas and Bexar Counties.

(e) Finally, the court's order stated that its judgment was final and that no stays would be granted.

In view of the foregoing holdings, the only present necessity to consider a stay relates to the District Court's decision with respect to multi-member districts in Dallas and Bexar Counties. A number of principles

have been recognized to govern a Circuit Justice's in-chambers review of stay applications. Stays pending appeal to this Court are granted only in extraordinary circumstances. A lower court judgment, entered by a tribunal that was closer to the facts than the single Justice, is entitled to a presumption of validity. Any party seeking a stay of that judgment bears the burden of showing that the decision below was erroneous and that the implementation of the judgment pending appeal will lead to irreparable harm.

As a threshold consideration, Justices of this Court have consistently required there be a reasonable probability that four Members of the Court will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction. See *Mahon v. Howell*, 404 U. S. 1201, 1202 (1971); *Organized Village of Kake v. Egan*, 80 S. Ct. 33, 4 L. ed. 2d 34 (1959). Of equal importance in cases presented on direct appeal—where we lack the discretionary power to refuse to decide the merits—is the related question whether five Justices are likely to conclude that the case was erroneously decided below. Justices have also weighed heavily the fact that the lower court refused to stay its order pending appeal, indicating that it was not sufficiently persuaded of the existence of potentially irreparable harm as a result of enforcement of its judgment in the interim.

In applying these considerations to the present case, I conclude that a stay should not be granted. The case received careful attention by the three-judge court, the members of which were "on the scene" and more familiar with the situation than the Justices of this Court; and the opinions attest to a conscientious application of principles enunciated by this Court. Moreover, the order of the court was narrowly drawn to ef-

fectuate its decision with a minimum of interference with the State's legislative processes, and with a minimum of administrative confusion in the short run.

Following a practice utilized by other Justices in passing on applications raising serious constitutional questions (see *Meredith v. Fair,* 83 S. Ct. 10, 9 L. ed. 2d 43 (1962); *McGee v. Eyman,* 83 S. Ct. 230, 9 L. ed 2d 267 (1963)), I have consulted informally with each of my Brethren who was available* at this time during the recess. Although no other Justice has participated in the drafting of this opinion, I am authorized to say that each of them would vote to deny this application. My denial of a stay at this point, of course, may not be taken either as a statement of my own position on the merits of the difficult questions raised in this case, or as an indication of what may, in fact, ultimately be the view of my Colleagues on the Court.

The application is denied.

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*All Justices, save two who were not available, have been consulted.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-147

BOB BULLOCK, ET AL.,
Appellants

v.

DIANA REGESTER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16(1) of the Rules of this Court, Dr. George Willeford, Chairman of the State Executive Committee of the Republican Party of Texas, Mr. Gene Diedrick, Chairman of the Executive Committee of the Smith County, Texas Republican Party, and Mr. Thomas G. Crouch, former Chairman of the Executive Committee of the Dallas County, Texas Republican Party, move that the appeal be dismissed, or, in the alternative, that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from an order of a three-judge District Court for the Western District of Texas holding that the State

legislative redistricting scheme for the State of Texas is unconstitutional and ordering immediate reapportionment of two of the State's 254 counties.

1. These cases involve the reapportionment of the Texas Legislature subsequent to and based on the 1970 Federal Census.

The Texas Constitution requires the State Legislature to apportion the state into senatorial and representative districts "at its first regular session after the publication of each United States decennial census" (Article III, Section 28; App. 175E[1]). If the Legislature fails to do so, "same shall be done by the Legislative Redistricting Board of Texas" (ibid.; App. 176E). In 1971 the Legislature adopted a redistricting plan for the State House of Representatives, but did not enact a plan for the State Senate (App. 9A).

On August 24, 1971, the Legislative Redistricting Board began deliberations to apportion the State into senatorial districts (App. 187F). A few weeks later the Texas Supreme Court held that the House redistricting plan was unconstitutional. Smith v. Craddick, 471 S.W.2d 375 (Tex. 1971), reproduced at App. 178F-185F. The Legislative Redistricting Board then refused to redistrict the House, asserting that it lacked the power, but the Texas Supreme Court issued a writ of mandamus ordering the Board to do so. Mauzy v. Legislative Redistricting Board, 471 S.W.2d 570 (Tex. 1971), reproduced at App. 186F-194F. Thereafter, the Board adopted redistricting plans for the Senate (on October

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[1]"App." refers to the separately-bound Appendix to the Jurisdictional Statement.

15, 1971) and for the House (on October 22, 1971). (App. 9A.)

2. Four separate cases were filed in four district courts challenging the Board's redistricting plans. On December 13, 1971, the Chief Judge of the United States Court of Appeals for the Fifth Circuit (Judge John R. Brown) ordered a three-judge court in each of the four cases, and consolidated the cases and transferred them to the Austin Division of the Western District of Texas. In view of the February 7, 1972, filing deadline for candidates for office, the parties agreed to expedite discovery and that any evidence heard in relation to any one case could be considered with regard to all of the cases. The three-judge court convened on January 3, 1972, and heard evidence for three and one-half days. (App. 3A-8A.)

Witnesses for the various plaintiffs presented evidence showing population deviations in the reapportionment scheme adopted by the Legislative Redistricting Board, and testified that the Board's plans discriminated against Negroes, Mexican-Americans, and other ethnic and political minorities, and also discriminated on the basis of wealth. Appellants called no witnesses and indicated that they believed that they had no obligation to justify the Board's reapportionment scheme. At the conclusion of the hearing on January 6, 1972, the court requested that all parties submit proposed alternative apportionment plans; several of the plaintiffs submitted plans, but appellants did not. (App. 8A, 14A, 19A-24A, 29A-31A, 40A-42A, 47A-53A, 61A-62A).

The court issued its comprehensive opinion (App. 1A-62A, 83A-109A) on January 28, 1972, more than a week before the filing deadline. It held that the 9.9 percent

population deviation[2] in the redistricting plan for the House of Representatives[3] was not supported by any rational and consistent state policy and did not reflect a "good faith attempt to achieve population equality as nearly as practicable," and ruled that accordingly the plan was unconstitutional (App. 13A, n. 5; see App. 9A-24A).

While this holding made it unnecessary "to decide other questions raised by the plaintiffs pertaining to the entire State of Texas," the court "fe[lt] compelled" to develop "some major points of consideration for the Legislature, specifically * * * regarding multimembered districts" (App. 24A, 25A). The evidence "clearly established" that "it simply costs more" for a candidate to run for office and to communicate with the electorate in multi-member districts than in similarly situated single-member districts (App. 27A). Although the metropolitan areas of the State consisted of "very similar urban electorates living in very similar geographic and demographic surroundings," they had been redistricted differently--Harris County, the largest

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[2]The 9.9 percent deviation was based on appellants' computations. The court below pointed out that the plaintiffs, using a different method, had calculated the total population deviation "as about 29.3%, rather than 9.9%," and noted as "significant" that the total deviation for two counties alone (Dallas and Bexar) was "a total of around 21,500 people" (App. 13A-14A, n. 5).

[3]The redistricting plan for the Senate was not challenged on the basis of population deviation, "although the total deviation is 4.5%, involving 16,213 people" (App. 8A, n. 3).

metropolitan area, was divided into single-member districts, while every other major metropolitan area was made a multi-member district (App. 30A). The court concluded that this difference in treatment amounted to an unjustified "classifying of candidates and their abilities to run [for office] and to form political associations according to wealth, affecting basically and unequally the poor, * * * and those not members of established political parties" (ibid.).

With reference to Dallas County, the court held that the multi-member districting scheme for the House tended "to dilute or cancel out the vote of Dallas County's Negro minority," and that therefore "the use of a multi-member district in Dallas County [is] unconstitutional" (App. 42A). In Bexar County, which includes San Antonio, the court found that Mexican-Americans were an "invidiously disadvantaged" minority group which had been "effectively removed from the political processes," and that the multi-member House district for Bexar County gave that group less opportunity to participate in elections successfully (App. 53A, 55A). It concluded that single-member districts were "constitutionally compelled" in San Antonio, since they would "obviously be of benefit in remedying the effects of past and present discrimination against Mexican-Americans" (App. 56A). The court rejected a claim that the Senate districts in Bexar County had been unlawfully gerrymandered to minimize the political strength of San Antonio Republicans (App. 56A-58A), and a claim that the Senate districts in Harris County improperly diluted the votes of the Negro minority (App. 58A-60A).

The court did not prescribe a new redistricting plan for the whole State, but

instead gave the Legislature until July 1, 1973, "to perform its functions of redistricting" (App. 61A). In Dallas and Bexar Counties, however, the court concluded that immediate relief was required in view of the "particularly compeling constitutional infirmities" shown there, involving "racial inequalities and hindrances," and accordingly adopted single-member redistricting plans for those counties (App. 62A).[4]

3. On February 1, 1972, appellants applied for a stay of judgment, claiming that if the redistricting of Dallas and Bexar Counties into single-member districts under the court's order was allowed to go into effect in the forthcoming elections, the restructuring of representation in those counties that would ensue could not be undone if this Court subsequently reversed the decision below. Mr. Justice Powell, noting that "the only present necessity to consider a stay relates to the District Court's decision with respect to multi-member districts in Dallas and Bexar Counties," denied the stay on February 7, 1972 (App. 199H, 197H-201H). The State election process consequently proceeded in accordance with the district court's decision; primary elections have been

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[4]The court set aside for the 1972 elections the requirement that candidates for the House reside in the single-member district to be represented, to facilitate the "transition from multi-member districts in Dallas and Bexar Counties to single-member districts" (App. 62A), and also ordered state officials to "adopt and implement any and all procedures necessary to properly effectuate the orders of this Court" (App. 64A). Appellants do not challenge either of these matters in this appeal.

conducted using the redistricting plan for the House found to be deficient, except in Dallas and Bexar Counties, where the primaries were held pursuant to the single-member districting plans adopted by the court.

ARGUMENT

The only issues raised by appellants are whether the court below erred in holding that the House redistricting plan for the whole State is unconstitutional or in ordering single-member districts for Dallas and Bexar Counties. We believe that these issues are not within the jurisdiction of this Court, and accordingly that this appeal should be dismissed. Alternatively, we contend that the district court correctly determined these issues by applying settled principles to the particular facts of this case, and that plenary review of its decision is not warranted.

1. Section 1253 of Title 28, United States Code, circumscribes in precise terms this Court's jurisdiction of direct appeals from three-judge courts: " * * * [A]ny party may appeal to the Supreme Court from an order granting or denying * * * an interlocutory or permanent injunction in any civil action * * * required by any Act of Congress to be heard and determined by a district court of three judges." The order of the district court declaring unconstitutional the redistricting plan for the entire State did not grant or deny any injunction. The court explicitly refrained from doing so, instead allowing the State Legislature until July 1, 1973, "to perform its functions of redistricting" (App. 61A). Since the court below "has issued neither an injunction, nor an order granting or denying one," this Court has "no power under §1253 * * * [to] deal with the merits

of this case" as concerns the plan for the State as a whole. Gunn v. University Committee, 399 U.S. 383, 390 (1970) (footnote omitted).[5] See, also, Whitcomb v. Chavis, 403 U.S. 124, 138 n. 19 (1972); Unborn Child v. Doe, 402 U.S. 936 (1971); Smith v. Garza, 401 U.S. 1006 (1971); McCann v. Babbitz, 400 U.S. 1 (1970); Hutcherson v. Lehtin, 399 U.S. 522 (1970); Dial v. Fontaine, 399 U.S. 521 (1970).

Nor are the district court's orders prescribing single-member districts for Dallas and Bexar Counties appealable under Section 1253. Those orders were premised on the "particularly compeling constitutional infirmities" (App. 62A) found to exist in those two counties but not shown to exist elsewhere. And the multi-member districting scheme used for Dallas and Bexar Counties was not part of a uniform plan; instead, multi-member districting was used, it was indicated, because of the special needs and wishes of the people in those two counties, and there was no overall statewide plan (see App. 19A-21A, 31A-35A). The evidence showed that each legislative district in the State was constructed as an independent, autonomous unit, based on the peculiar circumstances which the Legislative Redistricting Board determined existed there. Furthermore, the court's orders affect only two (Dallas and Bexar) of the

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[5]As the Court pointed out in Gunn, even if the action of the district court could be considered a denial of an injunction because the injunctive relief sought was not forthcoming, there still would be no jurisdiction in this Court since "appellants could not appeal from an order in their favor" (399 U.S. at 390, n. 5).

State's 254 counties, and 29 of the 150 seats in the Texas House of Representatives.

In this context, it is clear that the multi-member district plans for Dallas and Bexar Counties had only a local impact, and were not expressive of official, statewide policy. A three-judge court is not required to consider the constitutionality of that kind of state statute. Board of Regents v. New Left Education Project, 404 U.S. 541 (1972); Perez v. Ledesma, 401 U.S. 82, 86-88 (1971); Moody v. Flowers, 387 U.S. 97 (1967). Therefore, the district court was "acting in the capacity of a single-judge court" in its orders pertaining to Dallas and Bexar Counties, and consequently "there is no jurisdiction in this Court to review" those orders under Section 1253 (Perez v. Ledesma, supra, 401 U.S. at 86).

2. In any event, the district court did not err in holding that the House redistricting plan was unconstitutional or in ordering single-member districts for Dallas and Bexar Counties.

A. The House redistricting plan for the State, according to appellants' own computations, involves a population deviation of 9.9 percent. Appellants' contention that this deviation is within permissible limits and is justified by valid policy considerations is insupportable. This Court has indicated that in congressional districting, "the State [must] make a good-faith effort to achieve precise mathematical equality. * * * Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small." Kirkpatrick v. Preisler, 394 U.S. 526, 530-531 (1969). To be sure, "[s]omewhat more

flexibility may * * * be constitutionally permissible with respect to state legislative apportionment than in congressional districting" (Reynolds v. Sims, 377 U.S. 533, 578 (1964)); but "the overriding objective" in devising state legislative districts, as with congressional districts, "must be substantial equality of population among the various districts" (id. at 579), and the State must justify all deviations. See, also, Kilgarlin v. Hill, 386 U.S. 120 (1967); Swann v. Adams, 385 U.S. 440 (1967).

In the present case, as the district court pointed out, "the State has not attempted to explain in terms of rational state policy its failure to create districts equal in population as nearly as practicable, nor has the State sought to justify a single deviation from precise mathematical equality" (App. 14A). Appellants' claim that the population deviations are justified by "the State constitutional mandate for county integrity" (J.S. 10) was properly rejected by the court below as not supportable on the record here, since in fact the policy of preserving county boundaries "has been blatantly violated" (App. 16A; see, also, id. at pp. 15A-21A, 33A-34A). Thus while, as appellants note (J.S. 11), this Court in Kilgarlin v. Hill, supra, indicated that a state policy requiring legislative apportionment plans to respect county boundaries wherever possible might justify some population deviation, in view of the abandonment of that policy as concerns the present plan "there is simply no credibility left in the rationale advanced by the State in Kilgarlin" (App. 34A).

Nor are appellants' other purported justifications persuasive. The suggestion that the present plan should be sustained because the deviations were the necessary

result of "practical politics" (J.S. 14) is squarely at odds with this Court's admonition in Kirkpartick v. Preisler, supra: "We agree with the District Court that 'the rule is one of "practicability" rather than political "practicality."' * * * Problems created by partisan politics cannot justify an apportionment which does not otherwise pass constitutional muster" (394 U.S. at 533). And appellants' assertion "that trivial variations 5 or 10 percent either way from the optimum, or even a little higher, should be set aside only when it can be shown such variations result in meaningful effect on the processes of government" (J.S. 17-18) is little more than an attempt to have the Court adopt a de minimis test, a course which it rejected in Kirkpatrick as "inconsistent" with the "whole thrust" of the equality of population standard (394 U.S. at 530).

B. Plenary review of the orders below requiring single-member districts for Dallas and Bexar Counties is not now warranted. Those orders were not stayed, and accordingly the State election process has gone forward pursuant thereto. Primary elections have been held, and general elections probably will be completed before this Court could review the decision below. As appellants pointed out in their stay application, the restructuring of representation incident to the decision below thus largely has been, or shortly will be, effected, and that cannot be undone. In this circumstance, there is no reason for further review of these orders.

Moreover, appellants' arguments concerning these orders are without merit. This Court has made clear that "when district courts are forced to fashion apportionment

plans, single-member districts are preferable to large multi-member districts as a general matter." Connor v. Johnson, 402 U.S. 690, 692 (1971). Despite this, appellants contend that the court below erred in ordering single-member districts for Bexar County, on the ground that Mexican-Americans, who the court found have been and are discriminated against, are not a minority and should not be entitled to favored treatment. Constitutionally-guaranteed equal protection does not require, however, that one be in a minority. Instead, the inquiry is whether a person, or an identifiable group, is treated differently than other, similarly situated persons or groups without justification. And especially in an apportionment case like this one, where the whole question is whether each person has an equal vote so that a majority of voters are assured of being able to elect the candidate of their choice, it is clear that there is no requirement that persons discriminated against be members of a "minority" in a numerical sense before they are entitled to receive what the Constitution demands, an equal vote. Appellants do not suggest that Mexican-Americans are not the subject of discrimination, or that single-member districts are not needed to remedy this situation. The court's order does not provide favored treatment for Mexican-Americans, as appellants claim, but merely gives them "a reasonable chance" to overcome "past and present discrimination" and to participate in elections (App. 56A).

The assertion that the order regarding Dallas County is not proper because there is no showing that the voting power of Negroes was diluted under the proposed plan does not comport with the record in this case or the district court's factual

findings. There is ample evidence establishing that the multi-member district in Dallas County discriminates against poor persons in that county as compared with persons in Harris County, where single-member districts are used (App. 27A-30A); that no viable state policy supports the unequal treatment thus accorded Dallas County citizens (App. 31A-35A); that the black community in Dallas County "has been effectively excluded from participation in the Democratic primary selection process" (App. 40A); and that the interests of that community have been inadequately represented in the State House of Representatives (App. 41A, 42A). On these facts, the court below correctly concluded that appellees met the standard set forth in Whitcomb v. Chavis, supra, of proving that the multi-member district in Dallas County "unconstitutionally operate[s] to dilute or cancel the voting strength of racial or political elements" (403 U.S. at 144).

CONCLUSION

For the foregoing reasons, the appeal should be dismissed, or, in the alternative, the judgment of the district court should be affirmed.

Respectfully submitted.

THOMAS G. GEE,

WM. TERRY BRAY,

Attorneys.

August 1972.

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of this Motion to Dismiss or Affirm have been served upon each adverse party and each other party separately represented in this proceeding by United States air mail, postage prepaid, this 24th day of August, 1972, addressed to counsel for said parties at their respective post office addresses.

Wm. Terry Bray

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972

NO. 72-147

BOB BULLOCK, ET AL

Appellants

V.

DIANA REGESTER, ET AL

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MOTION TO DISMISS OR AFFIRM

Come now Diana Regester, et al, the original Plaintiffs below in Regester v. Bullock, together with Joe J. Bernal, et al, the Mexican-American Intervenors; Elbert Turner, et al, the Texas AFL-CIO Intervenors and Dick Reed, et al, Intervenors, and move to dismiss the State's appeal for lack of jurisdiction or, in the alternative, that the decision below be affirmed.

STATEMENT

These four civil actions were consolidated and tried before a three-judge court in Austin, Texas. Each of the actions, in varying manner challenged the apportionment of the Texas Legislature. After a trial on the merits, [1] the district court upheld the apportionment of the Texas Senate and declared unconstitutional the apportionment of the lower House. Injunctive relief was granted as to only two Texas counties, Dallas and Bexar, in which the court implemented a single-member district plan of representation. The balance of the State was left intact to afford the Legislature an opportunity to correct the existing constitutional deficiencies.

In voiding the apportionment of the Texas House, the court found that the "total deviation is not the result of a good faith attempt to achieve population equality as nearly as practicable" (App. 13, n. 5),[2] and that the "State of Texas simply

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[1] The district court heard live testimony for three and one half days and had before it over 2,000 pages of deposition testimony. Graves v. Barnes _____ U.S. _____, 92 S. Ct. 752 (1972).

[2] "App." refers to the Appendix to the Jurisdictional Statement.

had no rational State policy in the apportionment plan that resulted in the population deviation... and in the disparate treatment of metropolitan areas." (App. 19).[3] The court found no "rational justification for the haphazard combination of single and multi-member districts" (App. 22). It concluded that the State's "unexplained abandoment

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[3]The figure of 9.9 percent was the deviation as computed by the State. The Plaintiff claimed that this method tended to distort the actual percentage deviation which they asserted to be 29.3 percent.

The State had handled the large multi-member districts of Dallas (1,327,321) and Bexar County (828,413) by spreading the actual deviation of 16,289 and 7,318 respectively among the number of legislative positions which the populations had merited. Plaintiffs took the position that since Dallas and Bexar were each one district, the population excess or deficiency should be treated like the population excess or deficiency in any other district. This is probably best explained as follows: Dallas County was alloted 18 representatives for its population of 1,327,321 which was 16,289 persons short of 18 ideal districts (74,645 x 18 = 1,343,610). The State method spreads the deviation among the 18 districts for a 1.2 deviation. The Plaintiffs method treated the actual deviation of 16,289 against one ideal district for a deviation of 21.67 percent. A like method of handling Bexar County resulted in a deviation according to Plaintiffs method of 7.7 percent. (App. 13, n. 5).

of an existing State policy belies the presence of any rational State policy " (App. 21). [4]

The court found no "rational" (App. 35) justification for carving Harris County into twenty-three individual representative districts but having Dallas County elect eighteen representatives at-large. It found that the "vast inequalities of expense" (App. 33) of running for office resulted in a "substantive inequality on the basis of wealth in the protection afforded by the State's electoral laws to the rights of political association and voting" (App. 30).

It also found as to Dallas County "that [the] Black community has been effectively excluded from participation in the Democratic Primary election process" (App. 40); "recurring poor performance on the part of the Dallas County delegation concerning representation of Black interests" and that "hostility toward the Black community is still an integral part of Dallas County politics." (App. 41). Based on these findings of fact, the court concluded "that a multi-member district in

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[4] In Kilgarlin v. Martin (S. D. Tex., 1964) 252 F. Supp. 404, 444, the State of Texas explained to the court that in the future any county that attained one million population would be subdivided into less than countywide districts. Yet in 1971 when Dallas County had achieved a population of 1,300,000 it was left that large without explanation.

Dallas County tends to dilute or cancel out the vote of Dallas County's Negro minority" (App.42).

Finally, the court found "the existence [in Texas] of a recognizable Mexican-American minority..." (App. 43) which "because of long standing educational, social, legal, economic, political and other widespread and prevalent restrictions, customs, traditions, biases and prejudices... had historically suffered from and continues to suffer from, the results of invidious discrimination and treatment in the fields of education, employment, economics, health, politics, and others" (App. 45). In Bexar County (San Antonio) the court found that the Mexican-American population is concentrated in twenty-eight contiguous census tracts in which "the average resident lives in the most seriously straitened and deprived circumstances." [5]

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[5]This area which is 78.54 percent Mexican-American comprises almost 24 percent of the population of Bexar County but includes over 47 percent of the Bexar County housing units valued at less than $5,000, less than 1 percent of the housing units valued at over $50,000.00, over 65 percent of the Bexar County population which had never attended school, only 5 percent of the Bexar County college graduates, over 73 percent of the Bexar County families with incomes of less than $5,000, only 2 percent of Bexar County families with incomes over $25,000 and represents over 46 percent of Bexar County unemployment. (App. 48).

These "appalling conditions of poverty and its concomitants [result in] an often insurmountable cultural disorientation. . . " (App. 49) which together with the language barrier tends to isolate the Mexican-American from almost all aspects of the main stream of American life including politics. The court then found that "the cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican-Americans access to the political process in Texas even longer than the Blacks were formally denied access by the white primary" (App. 51). The court's conclusion is best stated in its summary of the evidence as to the Bexar County Mexican-American:

> All these factors confirm the fact that race is still an important issue in Bexar County and because of it, Mexican-Americans are frozen into permanent political minorities destined for constant defeat at the hands of the controlling political majorities. (App. 53).

Thus, the court found that even though the Mexican-Americans in Bexar County represent

a substantial minority,[6] they nevertheless have been invidiously disadvantaged by a "concomitance of poverty, past and continuing discrimination, a restrictive electoral system and a peculiar districting scheme..." (App. 53).

Having found the apportionment of the Texas House to be unconstitutional, the court concluded to stay its hand until July, 1973 to allow the Texas Legislature adequate time to correct the deficiencies (App. 61), except with respect to Dallas and Bexar Counties where the court found the use of multi-member districts to be "egregiously out of line with constitutional requirements" (Ibid). As to these two counties, the court implemented a single-member district representation plan, and, as earlier noted, implementation of the plan did not disturb the apportionment of the State's other two hundred and fifty-two counties.

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[6] According to the 1960 census figures Bexar County had a total population of 687,151 of which 257,090 (37.41 percent) were Mexican-American, 45,314 (6.59 percent) were Black and 382,666 (55.69 percent) were Anglo-American.

According to the 1970 census figures Bexar County had a total population of 830,460 of which 376,027 (45.28 percent) were Mexican-American, 56,394 (6.78 percent) were Black and 398,039 (47.93 percent) were Anglo-American.

ARGUMENT

THIS COURT LACKS JURISDICTION UNDER 28 U.S.C., SECTION 1253

The injunctive relief is narrow. It affects only two of the State's two hundred and fifty-four counties. Although the trial court's judgment invalidates the entire State's apportionment plan, no injunctive relief was ordered affecting the statewide plan. The grant of declaratory relief alone would not confer jurisdiction upon this Court under 28 U.S.C., Section 1253, Mitchell v. Donovan, 398 U.S. 427 (1970); Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963). Nor could the State appeal from the denial of broader injunctive relief because, of course, it suffers no injury thereby, Gunn v. University Committee to End the War, 399 U.S. 383, 390 (1970). See also Whitcomb v. Chavis, 403 U.S. 124, (1971) where the district court also found that the evidence indicated that the entire state required reapportionment but withheld action allowing the State (Indiana) a specified time to remedy the improper districting and malapportionment. From this action of the district court, reported in 305 F. Supp. 1364 (1969), the State appealed. The appeal was dismissed by this Court, citing Gunn, supra, for want of jurisdiction because no final judgment had been entered and no injunction granted.

Injunctive relief as to only Dallas and Bexar Counties is not sufficient to confer jurisdiction under Section 1253 on this Court. "The reconciling principle" of the cases under Section 2281 is a

"procedural protection against an improvident statewide doom by a federal court of a state's legislative policy." Phillips v. United States, 312 U.S. 246, 251 (1941). It has been consistently the view that "congressional enactments providing for the convening of three-judge courts must be strictly construed" Allen v. State Board of Elections, 393 U.S. 544, 561 (1969). This Court has been uniformly of the view that:

> " 'Despite the generality of the language' of that Section, it is now settled doctrine that only a suit involving a statute of general application' and not one affecting a 'particular municipality or district' can invoke [Section 2281]" Rorick v. Board of Commissioners, 307 U.S. 208, 212 (1939); Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 228 (1964); Moody v. Flowers, 387 U.S. 97, 101 (1967).

Board of Regents of the University of Texas v. New Left Education Project, _____ U.S. _____, 92 S. Ct. 652 (1972) forcefully reconfirmed that a three-judge court only "is required where the challenged statute or regulation, albeit created or authorized by a state legislature, has statewide application or effectuates a statewide policy." The injunctive relief granted below is clearly not of

statewide application as it affects only two of the State's 254 counties. Nor is there any suggestion that apportionment of Dallas and Bexar Counties was pursuant to any "general state policy," (id. 655, n. 2).

Indeed the apportionment of Dallas and Bexar Counties constitutes the very antithesis of general state policy, for according to some members of the Redistricting Board who authored the plan, Dallas County was "kept at large to conform to popular sentiment" in the County (App. 24). In fact, the members of the Redistricting Board in their testimony disclaimed reliance upon any state policy in fashioning the apportionment of Dallas and Bexar Counties. The order under attack by this appeal, i. e. apportionment of Dallas and Bexar Counties, represents no general state policy nor statutory command, and inasmuch as it affects only a fraction of the State of Texas, there is no jurisdiction basis.

THE QUESTIONS ARE NOT SUBSTANTIAL

The State's jurisdictional statement has little, if any, connection with the record or the opinion of the district court. It totally ignores the painstaking application of the standards set out by this Court. Moreover, the repeated assertion that the "conclusions of the lower court are based on no facts" (Jurisdictional Statement p. 20; cf. p. 9-18) does nothing to lend substantiality to the question.

The Three-Judge District Court found the entire plan infirm on the basis of population deviation. Whether one uses the questionable method employed by the State and arrives at a 9.9 percent deviation or whether he makes use of the Appellants' method of demonstrating a deviation of 29.3 percent, the fact of the matter is, however the deviation is computed, it always represents in excess of 21,500 people (App. 13, n. 5). It was this actual deviation that bothered the district court. This Court should not be misled by the shorthand figures in the form of percentages which the State claims adequately express their plan. Legislators represent people not percentages of people. To be swept into this shorthand trap would be ignoring what this Court held in Reynolds v. Sims, 377 U.S. 533 (1964) when it said that legislators represent people and not trees or cows.

To accept the position of the State that they need only strive for "low levels of population variance" (Jurisdictional Statement p. 13) would be a substantial retreat from Kirkpatrick v. Preisler, 394 U.S. 526 (1969) where this Court said, at page 531, that:

> to consider a certain range of variances de minimis would encourage legislators to strive for that range rather than for equality as nearly as practicable.

Appellees do not argue that absolute mathematical precision is a requirement of a constitutional apportionment plan but this Court has consistently held the law to require:

> the State to make a good faith effort to achieve precise mathematical equality. Unless population variances among districts are shown to have resulted despite such effort, the State must justify each variance no matter how small. Reynolds v. Sims, 377 U.S. 533, 577 (1964).

At the trial level, the State took the position that it was not required to justify the deviation in its plan. Now on appeal it is saying that the decisions on reapportionment are made on the basis of politics (Jurisdictional Statement p. 21-22). While the State is quite right that politics plays an important role in the interaction of legislators, this cannot be used as an excuse to disenfranchise by creating excessive population deviation among districts. This Court held ten years ago in Baker v. Carr, 369 U. S. 186 (1962), that "political question" was not a defense to reapportionment suits.

Indeed by its own conduct, Texas is precluded from claiming that its reapportionment plan is the product of a good faith effort. The plan was created by three members of a five member Redistricting Board. The three Board members who approved the plan were Attorney General Crawford Martin,

Lieutenant Governor Ben Barnes, and Comptroller Robert Calvert. These same three State officials were defendants in Kilgarlin v. Martin, 252 F. Supp. 404 (S. D. Tex. 1964). During the course of that trial, the defendants there assured the federal courts that the State's policy "limits the size of any multi-member district to fifteen representatives..." and that any county that attained a million or more residents in the future would be subdivided for purposes of representative districts, Kilgarlin v. Martin, 252 F. Supp. at 444. The court, in Kilgarlin, approved the disparate treatment between Dallas and Harris Counties in the 1965 Texas apportionment relying in part on the State's representation that different treatment would be accorded a county once it attained one million population.[7] This "policy" was called to the attention of the Redistricting Board during its public hearings on the apportionment plan for the Texas House. Nevertheless the three member majority of the Board abandoned this policy without explanation, and as the court found below, this "unexplained abandonment of an existing State policy belies the presence of any rational State policy" (App. 21).

Finally the court found that the utterly haphazard combination of multi-member and single-member districts created substantial denials of

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[7] Dallas County, with a population of one million three hundred thousand now has more population than Harris County had in 1965.

equal protection, both on the grounds of wealth and race, a holding which is completely consistent with the precedents of this Court. Cf. Taylor v. McKeithen, 407 U. S. 191 (1972).

If there ever was a minority which has been suppressed by the use of a multi-member district, it is the Mexican-American in Bexar County. The Court found that while Mexican-Americans are a large part of the county's population, nevertheless they have been limited in their impact and participation in the election of Representatives to the Texas State House. [8]

The court further concluded that this was due to a concomitance of poverty, discrimination and a peculiar electoral scheme which effectively removed the Mexican-American from this Bexar County political process (App. 55). This scheme, described as the multi-member place system, when conjoined with the absence of any formalized process of slating candidates for the Democratic primary [9]

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[8]Since 1880 a total of only five Mexican-Americans have served in the Texas State House as representatives of Bexar County (App. 52).

[9]The court found that in Bexar County, Texas the Democratic nomination for the Texas House of Representatives has been tantamount to election since no Republican has been elected since 1880 (App. 51).

literally destroyed any potential for coalition. As found by the court, Mexican-American votes were simply overwhelmed (App. 51).

The effect of this lack of impact on the elections was made clear in testimony of an Anglo member of the Bexar County delegation to the Texas State House of Representatives who was called by the State to extoll the voters of the multi-member district. He was unable to identify as much as one piece of legislation sponsored by a member of the Bexar County delegation at the most recent session of the Texas State House which might act to relieve or remedy the adverse conditions found to be extant in the barrio (App. 52). [10]

The 230,000 Black citizens of Dallas constitute 18 percent of the County population and 25 percent of the City population. They live in clearly defined sections of Dallas in virtually all Black neighborhoods. They are the product of a society that was rigidly segregated by state and local laws and customs.

From 1900 until 1966, no Black was elected to any public office in Texas nor, in fact, was any Black citizen even the nominee for public office of either the Democratic or Republican Parties. Since 1966,

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[10] See footnote 5 on page 5.

there has been one Black legislator among the 15 representing Dallas County in the Texas House of Representatives.

Evidence establishes, and the Court found, that in Dallas nomination as a candidate of the Democratic Party was tantamount to election to the Texas House of Representatives, and that nomination for these offices was controlled by a white political group known as the D.C.R.G.

The Court found that:

> "The Dallas plaintiffs have shown not only that the number of Black community residents who have been legislators is not in proporation to ghetto residents, but also that the Black community has been effectively excluded from participation in the Democratic Primary selection process." (App. 40).

The Court found further that the D.C.R.G., in the formulation of its slate of legislative candidates, "never" took into consideration the "interests of the Black ghetto" (App. 41). The antipathy of the D.C.R.G. toward the interests of the Black ghetto was forcefully demonstrated in the Democratic Primary run-off of 1970 when D.C.R.G candidates relied upon racist appeals to defeat two legislative candidates who were the overwhelming favorites of the Black ghetto (App. 42). The Court, quite properly, concluded that candidates elected on the basis of such appeals could not adequately represent the in-

terests of the Black citizens of Dallas County, and that individual districts would help insure fair representation of minority interests.

This Court told us in Whitcomb (supra) that the mere fact that ghetto residents were proportionally under-represented was not sufficient to prove invidious discrimination. Rather, we had to present "evidence and findings that ghetto residents had less opportunity" than others "to participate in the political process and to elect legislators of their choice." To say that the Blacks are represented by the D.C.R.G.'s Negro in Dallas or the Mexican-Americans by the admittedly unconcerned Anglo legislators in Bexar County is to evidence social blindness. To say that the Blacks in Dallas County or the Mexican-American in Bexar County have an equal opportunity to participate in the political process is nothing short of an absolute farce. The district court had no alternative than to find as it did.

Apart from the assertion by the State that Mexican-Americans do not deserve the protection of the Constitution because they are not a numerical minority, the State offers little else in the form of argument that substantial questions are presented. That multi-member districts have historical precedent is irrelevant to the question of discriminatory effect. Some of the most effective methods of discrimination have had extensive historical precedents. The district court evaluated thousands of pages of evidence and made fact findings as to the discriminatory effect of multi-member districts in

Dallas and Bexar Counties. Hence, the bald assertion by the State that there was no finding of fact concerning Bexar County is just wrong (Jurisdictional Statement 18).

The district court in its opinion refers to an abundance of evidence on dilution, including the effects of the majority place system (App. 38), the absence of the residency requirement (App. 38), the State's colorful history of racial and ethnic segregation (App. 38), the few minority members who are elected under the system (App. 40, App. 52), the apparent unconcern for minorities on the part of the representatives elected under the system (App. 41, App. 52), the submergence of minority votes (App. 38) and the like. This hardly concurs with the State's claim that there exists no dilution or cancellation.

The last argument made by the State is that the record establishes that Negroes in Dallas County are politically active and politically effective. It deserves little comment (Jurisdictional Statement 21). If the tokenism of the D.C.R.G. is what the State believes to be effective Black political activity then appellees submit that we might as well return to the situation extant prior to Nixon v. Herndon, 273 U.S. 536 (1924) and Smith v. Allwright, 321 U.S. 649 (1944).

The basic conclusion of the district court was that the Texas election structure isolates Mexican-Americans and Blacks in a manner not present in

the Indiana system considered by this Court in Whitcomb (supra). The Texas scheme of primary elections combines the majority requirement (and runoff) with the numbered place system. These mechanisms encourage the isolation of any minority by insuring that even if the majority is divided it can regroup in the runoff election to defeat the minority candidate.

No majority requirement was involved in Whitcomb as recognized by this Court at 403 U.S. 160. In fact, majority requirements are most uncommon outside the South and their discriminatory potential is well known Evers v. State Board of Election Commissioners, 327 F. Supp. 640 (S.D. Miss. 1971); Boineau v. Thornton, 235 F. Supp. 175 (D.S.C. 1964).

CONCLUSION

We respectfully submit this appeal should be dismissed for lack of jurisdiction, or in the alternative, that the judgment below should be affirmed.

Respectfully submitted,

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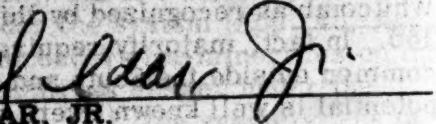
CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of this Motion to Dismiss or Affirm have been served upon each adverse party and each other party separately represented in this proceeding by United States air mail, postage prepaid, this 11th day of September, 1972, addressed to counsel for said parties at their respective post office addresses.



ED IDAR, JR.

Supreme Court, U. S.
FILED
FEB 23 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

Supreme Court, U. S.
FILED
DEC 4 1972
MICHAEL RODAK, JR., CLERK

No. 72-147

BOB BULLOCK, ET AL.,
Appellants,

v.

DIANA REGESTER, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

BRIEF FOR APPELLANTS

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In The

Supreme Court of the United States

October Term, 1972

No. 72-147

Bob Bullock, et al.,

Appellants,

v.

Diana Regester, et al.,

Appellees.

On Appeal From The United States District Court
For The Western District Of Texas

BRIEF FOR APPELLANTS

This appeal is from the decision of the United States District Court for the Western District of Texas holding that the legislative redistricting of the State of Texas is constitutionally defective because (1) the State of Texas failed to justify each and every population variance between districts, and (2) the use of multi-member districts in Dallas and Bexar Counties tends to dilute the votes of Negro citizens (Dallas County) and Mexican-American citizens (Bexar County).

OPINIONS BELOW

The opinions and orders of the trial court below are reported at 343 F.Supp. 704. They are reproduced in the separately bound Appendix to the Jurisdictional Statement (A.Jur.S.). They consist of: a per curiam opinion (A. Jur.S. 1A-62A); the order of the court (A.Jur.S. 63A-82A); a separate opinion of District Judge Justice, concurring in part and dissenting in part (A.Jur.S. 83A-96A); a separate opinion of District Judge Wood, concurring in part and dissenting in part (A.Jur.S. 97A-108A); a notation by Circuit Judge Goldberg, concurring specially in the result of Section IV of the per curiam opinion (having to do with multi-member districts in Bexar County) (A. Jur.S. 109A); and an amendatory order (A.Jur.S. 110A-113A).

Application for stay of that portion of the lower court judgment immediately implementing single-member districts in Dallas and Bexar Counties was presented to Mr. Justice Powell and by him denied, with opinion. 405 U.S. 1201 (A.Jur.S. 197H).

JURISDICTION

The actions below were brought to enjoin enforcement of a statute of the State of Texas enacted by the Legislative Redistricting Board of Texas pursuant to Article III, Section 28 of the Texas Constitution. Jurisdiction of the three-judge district court was invoked under 28 U.S.C. §§ 1343 and 2281. The date of the judgment sought to be reviewed was January 28, 1972. Notice of Appeal was filed March 27, 1972 (114B) in the United States District Court for the Western District of Texas, Austin Division. On May 19, 1972, by order in No. A-1207, Mr. Justice Powell extended time for docketing this appeal to and

including July 25, 1972. This appeal was filed on that date. Probable jurisdiction was noted on October 10, 1972. One week additional time for filing this brief to and including December 1, 1972, was granted. The jurisdiction of this Court to review the judgment of the district court is founded on 28 U.S.C. §§ 1253 and 2101(b). Jurisdiction is supported by *Swann* v. *Adams*, 385 U.S. 440 (1967), and *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

There is one Texas statute and one provision of the Texas Constitution involved. The statute is the Apportionment of the State of Texas Into Representative Districts. (A.Jur.S. 118C-132C). The constitutional provision is Article III, Section 26, of the Texas Constitution. (A.Jur.S. 174E)

QUESTIONS PRESENTED

I. Whether Texas' legislative districting plan was a permissible one within the standards hitherto set by this Court, and hence whether the action of the court below, in overturning the State's plan, was improper.

II. Whether the multi-member district adopted by Texas for Dallas County, Texas, unconstitutionally dilutes or cancels the votes of Black citizens.

III. Whether the multi-member district adopted by Texas for Bexar County, Texas, unconstitutionally dilutes or cancels the votes of the Mexican-American citizens who constitute a plurality of the citizens of Bexar County.

STATEMENT OF THE CASE

This case represents the fourth round[1] in the judicial forum of the decade-old and seemingly unending political struggle between the State of Texas and certain of its political groups over the State's efforts to comply with the mandate of the Equal Protection Clause of the Fourteenth Amendment. With one eye on the one-man, one-vote mandate of that Amendment, as explicated by this Court's prior decisions, and the other eye on the provision of its own constitution prohibiting the crossing of county lines, as explicated in a recent decision of the Texas Supreme Court,[2] the State of Texas adopted a plan with the lowest population variances available to it,[3] with what variances there were well within the limits established by this Court's prior decisions, and with only one, fully-explained departure from

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[1] *Round One:* Unreported decision invalidating apportionment of the Texas Legislature referred to in *Kilgarlin* v. *Hill*, 386 U.S. at 120 (1967).
Round Two: Kilgarlin v. *Martin*, 252 F.Supp. 404 (S.D.Tex. 1966), *rev'd sub. nom., Kilgarlin* v. *Hill*, 386 U.S. 120 (1967).
Round Three: Smith v. *Craddick*, 471 S.W.2d 375 (Tex. 1971).
Round Four: Bullock v. *Regester*, 343 F.Supp. 704 (W.D.Tex. 1972).

[2] *Smith* v. *Craddick*, 471 S.W.2d 375 (Tex.Sup. 1971).

[3] The record in this case is conclusive that the Board used the lowest population plan available to them that sought to comply with the state constitutional requirement of keeping county lines intact. The maximum deviations are 4.1% under the optimum and 5.8% over the optimum, and the total deviation is 9.9%. See note 9, *infra*. Following trial, some of the Republican appellees presented a plan for the state cutting one county line in northeast Texas and alleged to have an overall deviation of 9% as opposed to 9.9%. The lower court alludes to a plan (A.Jur.S. 61A, fn. 21) which contains only a 3.5% total deviation and which cuts only 23 county lines. The plan referred to was also presented after trial. The accuracy of neither of these plans has been checked, but the important thing is that neither was made available to the Legislative Redistricting Board, Texas' duly constituted redistricting authority whose "good faith" was attacked here.

the mandate of the state constitution.[4] In a plurality of opinions,[5] containing neither findings of fact nor conclusions of law and demonstrating that it was not so much the plan as the method by which it was adopted that was faulted,[6] the court below held that Texas must try — and undoubtedly litigate — again. And to do what? To arrive at a plan which attains precise mathematical equality, or alternatively be prepared to convince two out of three

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[4] The only departure made from the state requirement was made in northeast Texas. Bowie County (includes Texarkana, Texas) is bordered on two sides by the states of Oklahoma and Arkansas. Bowie County has a 1970 population of 67,318 (1970 CENSUS *op. cit. supra*), not enough for its own representative (9.15% under the optimum). The lowest population in any of the three Texas counties adjacent to Bowie County is 12,310 in Morris County. The total of these two counties is 80,123 (7.34% over the optimum). Morris County borders Bowie County only diagonally, and a district composed of these two counties would have adversely affected the overall flexibility of arrangement of other counties in the areas. Therefore, Red River County (population 14,298) was divided. It borders Bowie County on the west and Oklahoma on the north.

[5] District Judge Justice concurred in the court's opinion in all respects, with the exception of Part VI, with which he dissented. District Judge Wood concurred with the results of Parts III and IV "for the various reasons stated in the majority opinion" (Dallas and Bexar Counties multi-member districts), and dissented with the remainder of the opinion. Circuit Judge Goldberg specially concurred in the result of Part IV of the opinion.

[6] The trial court stated:

> "First, whatever 'tolerance' might conceivably attach to a State's explanation of deviations from a population ideal cannot reasonably or appropriately attach to the actions of a redistricting board which acted on the House of Representatives' plan only pursuant to a mandamus, *Mauzy* v. *Redistricting Board, supra,* and which proceeded to draw its conclusions in the manner just sketched. See *Silver* v. *Brown,* 1965, 46 Cal. Rptr. 308, 405 P.2d 132; *Legislature of the State of California* v. *Reinecke,* Sacramento No. 7917 [January 18, 1972]. See generally *Connor* v. *Johnson,* 1971, ... U.S. ....., 29 L.Ed.2d 268, 91 S.Ct. ..... We have serious doubts that this board did the sort of deliberative job con-

judges that every instance of departure from mathematical preciseness was in fact fully debated and explained during the legislative process and not only motivated by, but absolutely essential to effectuate, a rational state policy uniformly applied and not consisting of the respect for county lines which the Texas Constitution was heretofore thought to require. The broad issue presented by this appeal is whether legislative redistricting is a job of the elected representatives of the people or the data processors. Only the latter could obtain the perfection required by the lower court, for no matter how close the former could come, no matter how good-faith their efforts, there would always be some *de minimis* departure from precise mathematical equality, the motivation and justification for which would be obscured in the process of legislative compromise. It may well be too late for the federal courts to get out of

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templated by *Reynolds* as worthy of judicial abstinence." (A.Jur.S. 21A).

District Judge Wood answered this by stating:

"This overlooks the fact that this is a Board created under the provisions of Article III, Section 28, of the Constitution of Texas, for the purpose of redistricting the House and Senate of the State, where the Legislature in effect authorizes this Board to act, if the Legislature fails to do so. A most important element that this Court overlooks is that the officials who have been constitutionally designated to fill this vital role are five of the most prestigious officials elected by all of the people of the State of Texas, to-wit: the Lieutenant-Governor, the Speaker of the House of Representatives, the Land Commissioner and the Comptroller of Public Accounts, which Board acted in this case under the advice and counsel of the also democratically elected Attorney General of Texas. The Opinion concludes that we have serious doubts that this Board did a sort of deliberative job contemplated by *Reynolds* v. *Sims* as worthy of judicial abstinence. How the majority opinion reaches this conclusion from all the evidence in this case is a distinct mystery to me. In any event, the test is not the number of meetings or the type of 'deliberative job' done by the Redistricting Board." (A. Jur.S. 103A).

the political thicket. But if they are to remain there, they should either candidly recognize that any departure from precise equality is *per se* illegal or establish some permissible range within which they need not conduct an after-the-fact search for the golden bough of justification.

Article III, Section 2, of the Texas Constitution, sets the size of the Texas House of Representatives at 150 members. The Texas Constitution, Article III, Section 26, provides that members of the Texas House of Representatives shall be apportioned among the several counties according to the population in each, as nearly as may be, based on the most recent United States census,

> "provided, that whenever a single county has sufficient population to be entitled to a Representative, each county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties."

The last regular session of the Texas Legislature (1971) attempted to apportion the state into House districts. On September 16, 1971, its result was declared unconstitutional. *Smith* v. *Craddick*, 471 S.W.2d 375 (Tex. 1971) (A.Jur.S. 178F.) A main reason for this ruling was unnecessary cutting of county lines in rural areas in violation of the Texas Constitution, Article III, Section 26.[7]

[7] The state constitution requires that where a county has sufficient population to entitle it to a representative, the county itself shall be the representative district. If the county itself is too small to be entitled to a representative, it shall be joined with

While fully recognizing the supremacy of the federal law, the Texas Supreme Court said (A.Jur.S. 185F), "The federal requirement of equal representation clearly has not nullified Section 26 of Article III in its entirety." The Texas Supreme Court also said, speaking of the districting requirements of the state constitution (A.Jur.S. 184F), "if these districting requirements were excused by the requirements of equal representation, the appellants (the state officials) had the burden of presenting that evidence."

The Legislative Redistricting Board of Texas (hereinafter referred to as the Board) attempted to satisfy both federal and state constitutions.[8] The result is a reapportionment of the state that makes only one division of a small county in contravention of Article III, Section 26, of the state constitution, yet keeps all districts within a maximum variation ranging from a low of 4.1% under

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one or more contiguous areas to compose a representative district. If a county has excess population, it is entitled to have as many districts as its population warrants within its county lines, and the excess may then be joined with a contiguous area. An example given in *Smith* v. *Craddick*, 471 S.W.2d at 378, was that if a county has 100,000 population and the optimum district is 75,000, a 75,000 population district should be formed entirely within the county and the area containing the excess 25,000 may be joined to a contiguous area. The court below was of the opinion that the State had not adhered to *Smith* v. *Craddick* because the excess population in four instances was split between two contiguous districts rather than all going into one contiguous district. The example given by the court in *Smith* v. *Craddick*, however, was directed to explaining the handling of the 75,000 population that would comprise a district within the county. The handling of the excess is clearly stated as permissive rather than mandatory.

[8] In *Mauzy* v. *Legislative Redistricting Board*, 471 S.W.2d 570 (Tex. 1971), the Texas Supreme Court directed the Board to redistrict the State in accordance with its guidelines set forth in *Smith* v. *Craddick*, 471 S.W.2d 378 (1971).

the optimum to a high of 5.8% over the optimum (Table, A.Jur.S. 153C-155C).[9]

Thereafter, these actions were brought under the Equal Protection Clause of the Fourteenth Amendment and 28 U.S.C. § 1983. The appellees alleged that the districting of Texas into districts for its 150-member House of Representatives was defective because of unjustified population variances between districts and because the use of multi-member districts in Dallas and Bexar Counties discriminated against black people and Mexican-Americans. The

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[9] The optimum computed by dividing the population of the state (11,196,730) by the number of House districts (150) is 74,645. The least populous district has a population of 71,597. The most populous district has 78,943. The least percentage of the population of the state that can in theory elect a majority of the Texas House of Representatives is 49.89% (based on the total population of the 76 lowest population districts). The average deviation, plus or minus, of all districts is 1,356 or 1.82%. The lower court, though accepting it as correct for the purpose of decision, expressed some doubt about the way used by the state to compute the deviation in multi-member districts (A.Jur.S. fn. 5, 13A). For example, Dallas County with 1,327,321 people was given eighteen representatives. Eighteen times the state optimum totals 1,343,610. 1,343,610 minus 1,327,321 equal 16,289. 16,289 divided by the optimum (74,645) equals .21+, thus it is said that there may exist in Dallas County a 21+% deviation. The state divided the total population of Dallas County by eighteen and arrived at an average figure that is 1.2% under the optimum. (Dallas County grew in population 39.5% from 1960 to 1970, 1970 CENSUS *op. cit. supra* 3). The state's computation method seems in keeping with this Court's thinking in *Whitcomb* v. *Chavis*, 403 U.S. 124, 144 (1971), ". . . that Fortson, Burns and Kilgarlin proceeded on the assumption that the dilution of voting power suffered by a voter who is placed in a district 10 times the population of another is cured by allocating 10 legislators to the larger district instead of the one assigned to the smaller district." The state's method has been approved, *Kelly* v. *Bumpers*, (E.D. Ark., Civil No. LR-71-159, March 21, 1972).

trial court sustained the appellees' attack;[10] imposed single-member districts in Dallas and Bexar Counties by judicial order; and ordered that the Texas Legislature reapportion the entire State by July 1, 1973, on penalty of the court's districting the State if the legislature has not acted.

There is no evidence that any voter or group of voters was adversely affected by the population variances nor was there any evidence that use of multi-member districts was intended to discriminate against anyone. Therefore, the only issues presented in this appeal are: (1) whether the State had the burden to justify any and all of the small population variances; (2) if so, whether it has sufficiently done so; and (3) whether the use of multi-member districts has a discriminatory effect in fact.

SUMMARY OF ARGUMENT

The court below concluded that "the apportionment plan for the State of Texas is unconstitutional as unjustifiably remote from the ideal of 'one man, one vote' . . ." (A.Jur.S. 60A). The trial court construed its inquiry into the constitutionality of the Texas plan to be: "Has the State justified any and all variances, however small, on the basis of a consistent, rational State policy?" (A.Jur.S. 14A). The court held that the preservation of county lines is not a *per se* justification for a population deviation, that Texas had not demonstrated a rational and consistent reason for maintaining its county lines at the admitted expense of greater disparities in population deviations, and ultimately

[10] The plan of the Board was also attacked by Curtis Graves, a black State Representative from Harris County, challenging the apportionment of Senatorial districts in Harris County because of alleged racial gerrymandering. This attack was not sustained. (A.Jur.S. 58A-60A). The State Senate Districts in Bexar County were attacked by the San Antonio Republicans, alleging political gerrymandering. This attack was similarly not sustained. (A.Jur.S. 56A-58A).

concluded that the "State has failed to establish any rational and consistent state policy that would explain, let alone justify, its deviations from the constitutional principles of *Reynolds* and its progeny." (A.Jur.S. 22A). The court below, purely and simply, held the Texas plan to a standard expressly rejected by this Court in *Reynolds* v. *Sims,* 377 U.S. 533 (1964), and yet cited *Reynolds* v. *Sims,* as the basis for its holding.

After erroneously placing a burden of justification on the State, in view of the minimal deviations involved, the Court below refused to accept the preservation of county or other local political subdivisions as *a* justification, refused to accept the Texas constitutional prohibition against crossing certain county lines as *a* justification, and refused to accept the decision of the Supreme Court of Texas in *Smith* v. *Craddick,* 471 S.W.2d 375 (Tex. 1971), as any justification. The Court has not held that a State must justify *"any and all variances, however small."* The trial court judgment must be set aside because the Texas plan is within acceptable deviation limits, and such deviations as are present are justified by a rational State policy.

The court below also invalidated the multi-member House districts in Dallas and Bexar Counties, and divided those counties into single-member districts. With regard to Dallas County, the court based its holding on its conclusion that the multi-member district "tends to dilute or cancel out the vote of Dallas County's Negro minority." (A.Jur.S. 42A). A point-by-point comparison between this case and *Whitcomb* v. *Chavis,* 403 U.S. 124 (1971), however, demonstrates that the conclusion reached by the trial court was unjustified. Negroes in Dallas County are in no way inhibited in their exercise of the rights to register, to vote and to associate politically. Blacks participate in the Dallas County political process, they run for and are elected to political offices, and their interests are represented. Under

the guidelines of *Whitcomb*, the multi-member district in Dallas County was not shown to be constitutionally infirm.

The court's invalidation of the multi-member district in Bexar County is similarly insupportable under the guidelines of *Whitcomb*. The court, however, made no effort to conform its findings with regard to Bexar County to those specified by the Court in *Whitcomb*. Instead, the court based its holding on findings that Mexican-Americans constitute an identifiable ethnic minority, they have suffered discrimination in the past, and single-member districts will "be of benefit in remedying the effects of past and present discrimination" (A.Jur.S. 56A) and will assure Mexican-Americans of representation of their interests in the Texas House. These bases do not meet the *Whitcomb* requirements for a conclusion of unconstitutionality.

The only means of supporting the trial court's decision is on a *per se* basis, which has been consistently rejected by this Court, and absent a rule of *per se* invalidity, the multi-member districts in Dallas and Bexar Counties are not constitutionally infirm and the judgment of the trial court must be set aside.

ARGUMENT

I

POPULATION VARIATIONS BETWEEN LEGISLATIVE DISTRICTS OF THE SIZE PRESENT IN THIS CASE, RESULTANT FROM AN EVENHANDED APPLICATION OF A PROVISION OF THE TEXAS CONSTITUTION DESIGNED TO PRESERVE THE INTEGRITY OF SMALL COUNTIES, DO NOT INDICATE UNFAIR REPRESENTATION NOR DENY THE "EQUAL PROTECTION OF THE LAWS."

The Texas House of Representatives is composed of 150 members, Article III, Section 2, Texas Constitution, and

the 1970 Census reported the population of Texas to be 11,196,730. Therefore, the optimum Representative District in Texas would contain 74,645 persons. The apportionment plan prepared by the Legislative Redistricting Board of Texas contains a maximum deviation of 4.1% under the optimum (District 85) and 5.8% over the optimum (District 3), for a total deviation of 9.9% or a deviation ratio of 1.1 to 1. The overall plan contains an average deviation of 1.82%. There is no evidence concerning the effects of population deviation and the questions are first whether a State must justify at all deviations as small as those present in the Texas apportionment plan and secondly, if a State must justify such deviations, whether or not a conscientious effort to evenly apply long-established state policies, particularly against partition of small rural counties, is an acceptable reason for the small deviations present in the Texas districting plan.

A. Reynolds v. Sims, And Its Progeny Do Not Require Precise Mathematical Equality And Do Recognize The Preservation Of Political Subdivision Lines As A Legitimate Justification For Population Deviations.

In *Reynolds* v. *Sims,* 377 U.S. 533 (1964), whose constitutional principles the trial court found Texas had not met, the Court was confronted with an apportionment scheme from the State of Alabama with population variance ratios of up to 41 to 1 in the Alabama Senate and up to 16 to 1 in the Alabama House. Alabama had not been reapportioned for over 60 years. The Court, using the Alabama situation as its vehicle, set out to determine the basic standards and guidelines for implementing *Baker* v. *Carr,* 377 U.S. 559 (1962). The standards and guidelines laid out in *Reynolds* makes it evident that the court below was in error in requiring the State to justify *"any and all variances, however small."* (A.Jur.S. 12A).

The holding in *Reynolds*, as set forth by Mr. Chief Justice Warren, is:

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." 377 U.S. at 568.

Thereafter, the guidelines for apportioning on a population basis were set forth by the Court at 377 U.S. 577-79:

> "By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make *a honest and good faith effort* to construct districts, in both houses of its legislature, *as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness of precision is hardly a workable constitutional requirement.*
>
> "In Wesberry v. Sanders, supra, the Court stated that congressional representation must be based on population as nearly as is practicable. In implementing the basic constitutional principle of representative government as *enunciated* by the Court in Wesberry — equality of population among districts — some distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, *it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting* while still affording adequate representation to all parts of the State. To do so would be constitutionally valid, so long as the resulting apportionment was one based *substantially* on population and the equal-population principle was not diluted

in *any significant way. Somewhat more flexibility may therefore be constitutionally permissible with respect to state legislative apportionment than in congressional districting . . .*

"A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering. Single-member districts may be the rule in one State while another State might desire to achieve some flexibility by creating multi-member or floterial districts. Whatever the means of accomplishment, the overriding objective must be *substantial equality* of population among the various districts, so that the vote of any citizen is *approximately equal* in weight to that of any other citizen in the State." (Emphasis added).

Thus, not only did *Reynolds* expressly reject precise mathematical equality, it expressly recognized the preservation of political subdivision lines as a justification for deviation. Nonetheless, after concluding that *Reynolds* requires absolute mathematical equality, the court below then interpreted *Swann* v. *Adams,* 385 U.S. 440 (1967), to require that "whenever the fact of deviation from population equality is raised the burden falls upon the State to present 'acceptable reasons for the variations among the populations of the various legislative districts.' " (A.Jur.S. 10A). Thus while *Reynolds* recognizes that absolute mathematical equality is a practical impossibility, the court below interprets *Swann* to require the State to justify *any* deviation therefrom. That means that there is a presumption of invalidity and unconstitutionality attached to every appor-

tionment plan, that the State always has the burden of proof, and that a considerable amount of time and energy is going to be spent by federal courts in accessing explanations as to why the impossible was not attained. Such is not the requirement or implication of *Swann* v. *Adams*.

Swann v. *Adams* involved the apportionment of both the Florida Senate and House. The Senate deviations ranged from 15.09% over the optimum to 10.56% under the optimum, for a total deviation of 25.64%. The House deviations ranged from 18.28% over the optimum to 15.27% under the optimum, for a total deviation of 33.55%. The plan had been upheld by the district court on the basis that the variations were not great enough to require invalidating the apportionment plan. The Court stated at 385 U.S. 444:

> "*De minimus* deviations are unavoidable, but variations of 30% among senate districts and 40% among house districts can hardly be deemed *de minimus*, and none of our cases suggest that differences of this magnitude will be approved without a satisfactory explanation grounded on acceptable state policy."

Thus, *Swann* dictates that when deviations of the magnitude of 30-40% are presented, the State must satisfactorily show a valid state policy requiring such deviations. The case does not require a state to justify "*any and all variances, however small.*" *De minimus* deviations need not be justified since they are, as a practicable matter, unavoidable, but the Court did not specify what was *de minimus*.

Accordingly, for the final step to bridge the chasm between *Reynolds* and the standard set forth by the court below, the following was cited from *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969), (A.Jur.S. 11A):

> "We can see no nonarbitrary way to pick a cutoff point at which population variances suddenly become *de minimus*. Moreover, to consider a certain range of

variances *de minimus* would encourage legislators to strive for that range rather than for equality as nearly as practicable . . .

• • •

"[T]he 'as nearly as practicable' standard requires that the State make a good faith effort to achieve precise mathematical equality. See *Reynolds* v. *Sims*, 377 U.S. 533, 577 (1964). Unless population variances among . . . districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small . . .

• • •

"[The Constitution] permits only the limited population variances which are unavoidable despite good faith effort to achieve absolute equality, or for which justification is shown. [The omission by the trial court in the second quoted paragraph is the word 'congressional']."

B. Kirkpatrick v. Preisler Does Not Compel Invalidity Of The Texas Apportionment Plan.

Kirkpatrick, which the trial court felt "may substantially erode the 'tolerance' dictum in *Reynolds*" (A.Jur.S. 12A), is applicable authority for this case only if there are to be no distinctions drawn between congressional and legislative representation, in direct contradiction to *Reynolds* and its progeny, and only if it stands for the principle that any deviation, however small, creates a virtually irrebuttable presumption of bad faith and constitutional infirmity. *Kirkpatrick*, however, does not go so far. It requires a "good faith" effort to achieve mathematical equality, it permits variances which occur despite good faith efforts, and it requires justification from the State only when there has not been a good faith effort to achieve mathematical equality. Moreover, *Kirkpatrick* involved congressional redistricting, and as stated by this Court in *Reynolds*, 377 U.S. at 578:

> "[S]ome distinctions may well be made between congressional and state legislative representation."

In *Connor* v. *Williams*, ... U.S. ....., 92 S.Ct. 656 (1972), the Court observed at ..... U.S. ..... 92 S.Ct. 658:

> "Appellants rely on our recent cases invalidating congressional redistricting statutes that contained total deviations of 5.9%, Kirkpatrick v. Preisler, 394 U.S. 526, 89 S.Ct. 1225, 11 L.Ed.2d 519 (1969), and of 13.1%, Wells v. Rockefeller, 394 U.S. 542, 89 S.Ct. 1234, 33 L.Ed.2d 535 (1969), between the largest and the smallest districts. *These decisions do not squarely control the instant appeal since they do not concern legislative apportionment . . .*" (Emphasis added).

See also *Whitcomb* v. *Chavis*, 403 U.S. 124,162 (1971).

Congressional redistricting is based upon Article I, Section 2 of the Constitution, while state redistricting is based upon the Equal Protection Clause of the Fourteenth Amendment. There are fewer congressional districts than state legislative districts within a state, and thus percentage deviations should usually be smaller in congressional redistricting. Local interests are of greater importance on the state level, and hence the preservation of local political subdivisions is somewhat more important than in congressional districts.[11]

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[11] This was recognized by the New Jersey Supreme Court in *Jackman* v. *Bodine*, 55 N.J. 371, 262 A.2d 389 (N.J. 1970):

> "Nonetheless the county and the municipality are the meaningful units in state-local relations in many . . . situations, and elections from districts are more worthwhile if the county and the municipality are reflected in drawing the lines."

Moreover, as pointed out in *Reynolds* v. *Sims*:

> "[I]ndiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." 377 U.S. at 578-79.

Thus, the standards of congressional districting should not be determinative of state districting.

If, however, the standards of *Kirkpatrick* might be applicable to State legislative redistricting, its standard of "good faith" has indisputably been met by the State of Texas. The Missouri Legislature in *Kirkpatrick* was found not to have acted in good faith and to have relied on inaccurate statistical information. "Indeed, it [was] not seriously contended that the Missouri Legislature came as close to equality as it might have come." 394 U.S. at 531. There is absolutely no evidence of lack of good faith on the part of the Board in this case,[12] unless the rule is said to be that a redistricting authority is presumed guilty of bad faith until the contrary is overwhelmingly shown. Surely, the term "good faith" in apportionment cases means the same as in other areas of the law. Only one member of the Board was subject to the legislative plan — the others held state-wide offices and, thus, they had no vested personal interest to protect. It is not credible that *Kirkpatrick*, in condemning the specific Missouri action before it, intended to create a virtually irrebuttable presumption of bad faith on the part of all apportioning authorities.

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[12] The only things the court below said which even remotely touch on the issue of good faith were its criticisms of the manner in which the Board conducted its deliberations and its suggestion that the Board ignored the assurance given by the State in *Kilgarlin* that whenever a county attained a population in excess of a million residents, it would be subdivided into single-member districts. As to the first criticism, see note 6, *supra*. As to the latter, the court in *Kilgarlin* did not purport to rely on any long-standing State policy but rather simply recognized that the population distinction found in the particular redistricting bill then being challenged was rational under the circumstances. It did not suggest that a population distinction based upon 1960 census figures would wed the State for all time to the very same distinction in all subsequent redistricting schemes. To suggest, as does the court below, that a distinction drawn and found rational in 1965 represents "an existing state policy" to which a new legislature must remain faithful in 1971, is to substitute historical consistency for rationality.

Since Texas did not achieve precise mathematical equality, and regardless of its good faith effort to do so consistent with a subordinated State policy of preserving county lines, the trial court held it to the burden of justifying "any and all variances, however small",[13] and then summarily rejected the justifications. The trial court held that the preservation of county lines was not a *per se* justification, and thus refused to accept the preservation of county lines as *any* justification. The latter does not logically flow from the former. The State of Texas has never contended that the preservation of county lines would justify deviations of unlimited magnitude. Indeed, the Texas Supreme Court specifically recognized that the crossing of some county lines, in violation of Article III, Section 26, of the Texas Constitution, might be necessary to achieve the substantially equal representation required by the Equal Protection Clause, and recognizing the supremacy of the federal law, acknowledged that such crossing would be accomplished, although it should absolutely not be done unnecessarily. The preservation of county lines and population equality as nearly as practicable are not necessarily anathema to one another, but can be accomplished together. The predominant goal of the Board was substantial population equality, with *de minimus* deviations to preserve county lines. If the Texas justification is not constitutionally valid, then there can be no constitutional State justifications as a practical matter.

Moreover, the policy in Texas of preserving county lines in legislative districting enjoys a more rational and legitimate basis than did Missouri's congressional districting

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[13] The trial court considered deviations of 3.7% and 4.1% under the optimum in Harris County, one of the most rapidly growing areas of Texas, to be "large" and "insupportable". (A.Jur.S. 18A).

policy in *Kirkpatrick*. First, the Texas policy is required by the Texas Constitution. Secondly, a prior redistricting plan was declared unconstitutional by the Texas Supreme Court, *Smith* v. *Craddick*, for unnecessarily crossing county lines, and future Texas redistricting authorities were warned to cross county lines only where absolutely necessary. Conversely, Missouri's congressional districting plan policies were apparently afterthoughts based upon the argument recognized in *Reynolds* that the preservation of local political subdivision lines would minimize the opportunity for gerrymandering. Moreover, it was clear that Missouri could easily have come closer to mathematical equality by simply moving *entire* contiguous counties, thus *still* preserving its county lines. Lower deviation plans that preserved subdivision lines were before the Missouri Legislature and were rejected. The refusal of the Court to accept Missouri's makeweight justification is not determinative of the justification for deviation shown by Texas. It is not necessary that the State convince the trial court of the rightness of the Texas policy of preserving county lines.[14] It is enough that the policy is legitimate, it is rational,[15] and

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[14] The trial court viewed the real question as: "Has Texas demonstrated a rational and consistent reason for maintaining its county lines at the admitted expense of greater disparities in population deviations?" It also criticized *Craddick* for making "no effort to explain any rational state policies that may be ensconced in Article III, § 26 of the Texas Constitution . . ." Of course, the preservation of political subdivision lines will by its very nature create "disparities" in population, and thus the court was really questioning whether Texas had a "rational and consistent reason" for Article III, Section 26, of the Texas Constitution. The court apparently would require not only a rational state policy, but also a "rational and consistent reason" for having the national policy.

[15] In *Kilgarlin* v. *Hill*, 386 U.S. 120 (1967), this Court left undisturbed the trial court's finding: "that Section 26 embodies the State policy to maintain the integrity of counties and county lines, that such is a rational policy . . ." *Kilgarlin* v. *Hill*, 252 F.Supp. 404, 427-28 (S.D. Tex. 1966).

it was subordinated to the primary policy of substantial population equality. No one would contend that respect for county lines would justify a 50% deviation and the question is not whether county integrity is a total justification for any variation however large. Nevertheless, where, as here, the deviations are not large, county integrity, based upon a legitimate rational state policy, must be viewed as justification for some deviation.

C. If Kirkpatrick Requires Justification Of All Departures From Precise Mathematical Equality, Notwithstanding The Good Faith Of The Districting Authority, It Should Not Be Extended To Legislative Apportionment Because It Would Provide An Impractical And Unworkable Standard In That Context.

If the precise mathematical standards of *Kirkpatrick* place upon the State the burden of justifying "any and all variances, however small," and however good faith the State's efforts to achieve mathematical equality, and further, if the preservation of county integrity based upon a rational state policy is not only insufficient justification for small deviations, but is no justification at all, then it is time either to reexamine the standards of *Kirkpatrick* or to hold that it does not apply to state legislative districting.[16] If *Kirkpatrick* is interpreted to require absolute precise mathematical equality *per se*, and the failure to achieve such equality establishes bad faith, or lack of good faith, then there are no state policies worthy of con-

[16] This Court clearly indicated this question was not decided when it stated in *Connor* v. *Williams*, ... U.S. ....., 92 S.Ct. 656, 658 (1972):

> "If we are to consider the applicability of *Preisler* and *Wells* to state legislative districts, it would be preferable to have before us a final judgment with respect to the entire State."

sideration as justification for deviation. Such standards are impractical and unworkable in the arena of legislative apportionment.

First, the *Kirkpatrick* standards, as interpreted by the lower court, sacrifice the basic objective of "fair and effective representation for all citizens" and substitute in its place a meaningless standard of arithmetical preciseness. But "Mathematical exactness or precision is hardly a workable constitutional requirement." *Reynolds* v. *Sims*, 377 U.S. at 577. Mr. Justice White, in his dissent in *Kirkpatrick*, observed that if "county and municipal boundaries are to be ignored, a computer can produce countless plans for absolute population equality, one differing very little from the other, but each having its own very different political ramifications." 394 U.S. at 556. Thus, mathematical preciseness does not *per se* achieve fair and effective representation.[17]

Moreover, precise mathematical equality should not be an end in and of itself, because even precise equality based upon Census data may well be only substantial equality, or even insubstantial equality, on a practical

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[17] This was recognized by the trial court when it pointed out that a State would have the burden of justifying, as having a rational basis, even a computer-perfect, mathematically-equal districting plan:

> "Arguably, the Fourteenth Amendment forbids a plan that reflects 'no policy, but simply arbitrary and capricious action,' Baker v. Carr, 1962, 369 U.S. 186, 226, 82 S.Ct. 691, ..., 7 L.Ed.2d 663, 691, Reynolds v. Sims, supra, and which is not 'free from any taint of arbitrariness or discrimination,' Roman v. Sincock, supra, entirely independent of any population deviations: 'To the extent that a state's legislative apportionment plan is conclusively shown to have no rational basis, such a plan violates the equal protection clause.' Davis v. Mann, 1964, 377 U.S. 687, 694, 84 S.Ct. 1453, ..., 12 L.Ed.2d 609, 619 (concurring opinion). Cf. Swann, supra, at 572." (A.Jur.S. 22A).

basis. For example, minorities have traditionally been undercounted in censuses. Pritzker and Rothwell, "Procedural Difficulties in Taking Post Census in Predominantly Negro, Puerto Rican and Mexican Areas," *Social Statistics and The City,* (Heer Ed. 1968). Texas has substantial Negro (13%) and Mexican-American (18%) minorities. Further, actual population figures are not an accurate correlation to the actual number of persons eighteen years old and over, and hence eligible to vote. Thus, the equalization of district to exact mathematical preciseness does not mean equalization of voting power, and equalization of voting power is the foundation of the legislative apportionment cases. Moreover, since the Census is taken at 10-year intervals, a Census would be used as a basis for apportionment for elections occurring during this entire period. However, district populations grow at different rates, only in small part predictable, and precise mathematical equality (or as near as Census data permits) in 1972 may be grossly unequal in 1980. This was clearly shown with regard to the Missouri situation involved in *Kirkpatrick.* In 1969 this Court struck down a variation of 25,802 people between the highest and lowest congressional district and required the Missouri Legislature to reapportion on the 1960 Census figures. It did, and its new 1969 plan was approved by the lower court as complying with *Kirkpatrick.* When the 1970 census figures were in, it was found that districts approaching equality under the 1960 census varied as much as 228,314 persons, and that the difference between only two of Missouri's ten districts was less than that invalidated by *Kirkpatrick.*[18] Figures such as these absolutely explode the notion that small population variances are of any real meaning. Another re-

[18] Appendix to Jurisdictional Statement at 3, *Danforth* v. *Preisler,* (No. 71-1396, *aff'd* 40 U.S.L.W. 3582, June 13, 1972).

vealing example of the rough nature of raw census figures is provided by a comparison of two diagonally touching single-member districts in Harris County, Texas, districts 90 and 93. The total population of district 90 (74,377) is .4% under the optimum for a Texas Legislative district (74,645) and 2.2% greater than the total population of district 93 (72,761) (which is 2.5% under the optimum). The number of persons of voting age in district 90 is 55,681; the number of persons of voting age in district 93 is 39,767. In percentages, district 90 has 2.2% more people than district 93 but has 40.2% more people of voting age. Report No. 01140687, Office of Information Services of the office of the Governor of Texas (extract of population data from the First Count Tapes of the 1970 Census by population of persons eighteen years and over). The variations in numbers of persons of voting age in legislative districts vary rather widely throughout the state even though the districts are of substantially equal overall population. (See Report No. 01140687, Office of Information Services of the Office of the Governor of Texas (extract of population data from the First Count Tapes of the 1970 Census by population of persons eighteen years and over).

The above is submitted, not as a guide for further refinement of the exact equalization process, but rather as indicative of the futility of the quest after exact precise mathematical equality. Precise mathematical equality is not, or should not be, the goal under the Fourteenth Amendment. Fair and effective representation for all citizens is the basic aim of legislative apportionment. *Reynolds* v. *Sims*, 377 U.S. at 565-66. This goal is not to be attained by blind adherence to arithmetic, but rather by a recognition of practicalities of political processes and a goal of substantial equality in light of these practicalities. Any plan drawn

for submission to a districting authority will have political effect. Those members of the authority having familiarity with given areas will have greater knowledge of political impact in those given areas and adjustments will in all probability need to be made to insure fair representation of the people. Yet if there is no play in the joints of government such adjustments cannot be made. Even relatively minor adjustments between districts proposed cannot be made because of a ripple effect over the whole state. The process of compromise — the life blood of practical politics — is most applicable to political choices, and some small palpitations in numbers are necessarily reflected by its workings in the legislature districting. A standard of precise mathematical exactitude, besides being unworkable as a practical matter, has a wholly undesirable and unavoidable tendency to stiffle legislative process.

It is wholly unsound and impractical to say that there is no point short of absolute mathematical equality of population where considerations of substantial population equality achieve parity with community of interest, political subdivision lines, and the other things that should be considered in an effort to achieve fair representation. If this Court approves the rule of mathematical precision applied *per se* by the lower court it will be abandoning the good it has done and will be repudiating the wisdom of *Reynolds* v. *Sims*, 377 U.S. 533, 578 (1964) in not setting precise constitutional tests, as opposed to viewing each case on its own merit. A rule of precise mathematical equality, as applied by the lower court, amounts to a presumption of invalidity and furnishes that presumption as a substitute for evidence where neither side can by any objective proof establish the effect, or lack of effect, on legislative action, of a particular small population variance. Therefore, a rule of precise mathematical equality in legis-

lative districting not only misplaces the burden of proof in instances of trivial population variance, it furnishes by irrefutable presumption, its own proof that any districting plan judged by a rule of precise mathematical equality is invalid.

In summary, the plan here under attack contains an average deviation of only 1.82% and attains the apportionment goal of substantial equality. Further inquiry is not required, but even so, Texas has justified these small deviations on the basis of compactness, contiguity, and the rational and legitimate state policy of preservation of county lines. To hold these deviations to be constitutionally infirm is to require precise mathematical equality as the *only* constitutional apportionment basis — anything less must fall. Appellant does not believe this to be the law, but if it is, it should not be. Absolute precise mathematical equality is an impracticable standard which ill serves the goal of fair and effective representation for all citizens.[19]

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[19] While the Court in *Kirkpatrick* was hesitant to specify any *de minimus* deviation range for fear that the State legislatures would "strive for that range rather than for equality as nearly as practicable," 394 U.S. at 531, to require the rational and consistent justification of all deviations "however small" is to encourage legislatures to opt out in favor of the courts and computers. It is respectfully submitted that it is perfectly consistent to require legislatures to aim for "equality as nearly as practicable" and yet to apply a *de minimus* standard to the end product. If it could be demonstrated, as it was in *Kirkpatrick*, that the legislature started out aiming for less than equality, such a showing would certainly negate any presumption of good faith, and it would not be unfair to require the State to come forward with justification of all deviations. However, where the State aims for equality (as it is undisputed Texas did here), but slightly misses, it is not unreasonable to shift the burden of proof to the challengers. Appellants do not seek a rule of *per se* legality, but only a shift in the burden of proof as to those trivial variances, the required justification of which would amount to a rule of *per se* illegality.

II

NO UNCONSTITUTIONAL DILUTION OR CANCELLATION OF THE VOTING POWER OF AN ETHNIC GROUP IS SHOWN TO RESULT FROM THE USE OF MULTI-MEMBER DISTRICTING IN DALLAS COUNTY WHERE THERE IS NO EVIDENCE NEGROES HAVE BEEN DENIED EFFECTIVE PARTICIPATION IN THE POLITICAL PROCESSES AND THE LOWER COURT FINDS NO FACTS TO SUPPORT ITS CONCLUSIONS AND SPECULATIONS THAT SUCH DILUTION OR CANCELLATION HAS OCCURRED.

The trial court invalidated Texas' use of a multi-member district in Dallas County on the ground that the use of such a district "tends to dilute or cancel out the vote of Dallas County's Negro minority." (A.Jur.S. 42A). While the trial court purported to follow *Whitcomb* v. *Chavis,* it clearly departed therefrom by (1) placing upon the State the burden of "showing that the interests of the black ghetto, like those of the white areas, are taken into consideration in the formulation of the entire slate" of primary candidates (A.Jur.S. 41A), and (2) equating permission "to enter the political process . . . only through the benevolence of the dominant white majority" (*ibid.*) with "being denied access to the political system," 403 U.S. at 155.

Unlike the trial court in *Whitcomb,* the court below made no findings of fact as such and therefore it is difficult to ascertain precisely where philosophical speculation ends and factual determination begins. And since the lower court felt compelled to express its judicial distaste for the "majority" and the "place" requirements and absence of a subdistrict residential requirement in Texas elections, to chronicle what it deemed to be Texas' "rather colorful his-

tory of racial segregation,"[20] and to note what it sensed to be a general hostility toward the black community in Dallas politics, it is difficult to determine whether the court applied *Whitcomb* or its own standards of morality and propriety in arriving at its ultimate conclusion of invalidity.[21]

While it is impossible to divine precisely what the trial court did find and what findings it relied upon, it is rather easy to perceive what the court did not purport to find, and to demonstrate that what this Court found missing in *Whitcomb* is similarly absent here:

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[20] The trial court's recitation of Texas history is accurate but ancient. It is true that Blacks were effectively excluded from the political process during the first half of the 20th Century (R. 290-91), but it is equally true that the most recent incident involving resistance to a Negro's right to vote was 1956 (R. 348). It was stipulated that there has been no interference with the voting rights of black people in recent years, and one of the black plaintiffs testified that he knew of no effort to keep black people from voting (Conrad's Dep. 21) and that black people now have access to the political system and the opportunity to vote (Conrad Dep., p. 21).

Nevertheless, ignoring the present and focusing on the past, the court below stated that such history of discrimination against blacks made it "not unlikely that Texas' use of multi-member districts . . . unconstitutionally infringes the voting rights of racial *and political* minorities in *all* Texas cities that are districted as multi-members." (A.Jur.S. 39A) (Emphasis added). While the court found it unnecessary to rest its decision on such a holding, it is difficult to assess the effect this had on what the court did hold. One thing is clear: the rules of the political game criticized by the trial court (such as multi-member districts, the "place" requirement, and the "majority" requirement) were all established during an era when the Negro was — by virtue of other rules long-since struck down — voiceless and voteless. Clearly the rules criticized by the trial court were not designed to discriminate against Blacks — that had already been thoroughly accomplished.

[21] For instance, while the trial court did not feel compelled to do so, it did devote the entirety of Part II of its opinion to an explanation of why it would strike down any redistricting plan

(1) The record does not show, nor does the trial court suggest, that Texas' use of multi-member districts in Dallas County or elsewhere was "conceived or operated as purposeful devices to further racial or economic discrimination." 403 U.S. at 149.[22]

(2) There is nothing in the record or in the trial court's opinion to indicate that "Negroes were not allowed to register or vote, to choose the political party they desired to support, to participate in its affairs. . . ." 403 U.S. at 149.[23]

(3) The trial court did not find that "the Democratic

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which utilized multi-member districts in some metropolitan areas and single-member districts in others. According to the court, such divergent treatment — as was made between Harris County with single-member districts and other large cities with multi-member districts — would constitute a discrimination among candidates on the basis of wealth. The trial court recognized the novel nature of its decision and distinguished *Whitcomb* and *Kilgarlin* on the basis that such a contention had not been discussed in those cases. Of course, this issue is not now before the Court, but again it is difficult to determine the extent to which the trial court stretched *Whitcomb* in Part III, dealing with Dallas, to accomplish the result it felt required by its far-reaching analysis in Part II.

[22] Even the trial court recognized that "effect" on racial minorities, if any there was, would not be sufficient to invalidate a districting scheme. (A.Jur.S. 58A). Some evidence of "intent" or design would be required. The trial court, however, did not specifically refer to "intent" or design with regard to multi-member districts, but did consider intent with regard to the Harris County Senatorial districts, and concluded there had been no showing that the senatorial districts either operated or were designed to dilute the vote of the black minority. If the Board were not racially motivated with regard to the senate districts, it seems inappropriate to infer that it was racially motivated with regard to the Dallas multi-member House district.

[23] Pretrial Order §(a)3, *Curtis Graves, et al.* v. *Ben Barnes, et al.*, Civil Action No. A-71-CA-142; Pretrial Order §(a)7, *Diana Regester, et al.* v. *Bob Bullock, et al.*, Civil Action No. A-71-CA-143; Pretrial Order §(a)7, *Van Henry Archer, Jr., et al.* v. *Preston Smith, et al.*, Civil Action No. A-71-CA-145.

Party could afford to overlook the ghetto in slating its candidates." 403 U.S. at 150.[24]

(4) The evidence did not show nor did the court find that Blacks "were *regularly* excluded from the slates of both major parties. . . ." 403 U.S. at 150.[25]

(5) The evidence did not show nor did the trial court find that the Democratic Party "failed to slate candidates satisfactory to the" Blacks of Dallas County. 403 U.S. at 152.

(6) There was nothing in the evidence or the trial court findings to indicate what Dallas County Blacks' "interests were in particular legislative situations and nothing to indicate that the outcome would have been any different" if Dallas' 18 legislators "had been chosen from single-member districts."[26] 403 U.S. at 155.

The trial court basically made five "findings," or rather "conclusions," with regard to the Dallas evidence that it considered meaningful in accordance with the standards of *Whitcomb*: (1) That the number of black community

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[24] Rev. Brown testified that members of the black community participate in making up the DCRG slate. (R. 904). Mr. Allen, a member of the black community, participated in choosing Joe Lockridge, a black, for the DCRG slate. (R. 709). Mr. Weiser testified that Democratic candidates must have the votes of the black community in order to win in Dallas County. (R. 250). There were blacks included on the DCRG slate. (R. 421, 709). Obviously, the black community was not "overlooked" in the slating of candidates by the Democratic party.

[25] Dr. Conrad, a black, had been elected to the Dallas School Board (R. 390). Mr. Allen, a black, had been elected to the Dallas City Council (R. 685). Joe Lockridge (R. 709) and Rev. Holmes (R. 421), both blacks, had been elected to the Texas House of Representatives as Democrats with DCRG endorsement. Joe Kirving, a black, ran for the Texas House as a Republican, but was defeated (R. 405-06).

[26] See notes 31 and 35, *infra*.

residents who have been legislators is not in proportion to the number of ghetto residents; (2) That white candidates endorsed by the Dallas Committee for Responsible Government (DCRG)[27] in either a primary or general election can win in a county-wide race without appealing to the Negro vote; (3) That the interests of the black ghetto are *never* considered in the formulation of the *entire* slate of primary candidates by the DCRG; (4) That the black community participates in the selection of Democratic primary candidates only in the recruiting process and has no say as to how many Negroes, if any, will be slated; and (5) That there has been a recurring poor performance on the part of the Dallas County delegation concerning the representation of the black interests in the Texas House of Representatives.

The first "finding" is undoubtedly correct but, in and of itself irrelevant under *Whitcomb*.[28] The second "finding"

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[27] The DCRG was described as follows by Senator Oscar Mauzy, a member of the Texas Senate from Dallas County whose candidacy the DCRG consistently opposed and who served as counsel to some of the plaintiffs in this case:

"A. Judge Justice, I was a member of the Democratic Executive Committee myself from 1962 to 1966 as a precinct chairman, and it was during that period of time that the DCRG was formed by a group of individuals who were precinct chairmen of the Dallas County Democratic Executive Committee. Since then I have not had personal contact with it except through the mailings that they put out and press releases and things of that kind. As I understand it, they are a group of individual citizens, some of whom are Democratic Party office holders and some of whom are not, who seek to influence the nomination of candidates for the Democratic Party, for nominees for state representatives in Dallas County and who seek to influence the elections of individual precinct chairmen, and in some instances seek to influence the nomination of other Democratic nominees for public office in Dallas County." (R. 384-85).

[28] "Nor does the fact that the number of ghetto residents who were legislators was not in proportion to ghetto population satisfactorily prove invidious discrimination absent evidence and

has some support in opinion evidence,[29] but likewise is irrelevant under *Whitcomb*.[30] The third "finding" is clearly

findings that ghetto residents had less opportunity to participate in the political processes and to elect legislators of their choice." 403 U.S. 149.

[29] This "finding" is apparently based on the opinion of Don Weiser, a mathematician, that a white candidate hostile to the black community can win (R. 220) and Senator Mauzy's statement that it was possible to ignore the black community and still get the Democratic nomination (R. 339). However, Weiser agreed that based on his analysis of the votes, removal of the black vote from the democratic candidates would have caused the defeat of each democratic candidate (R. 250). Also, Dr. Conrad, one of the plaintiffs and a black surgeon serving on the Dallas School Board, readily admitted that the support of the black community was essential to the election of the Dallas delegation (R. 416). Representative Holmes, one of the black plaintiffs and a man who every witness agreed was a good representative of the black and white communities (severally and collectively), described the Dallas multi-member delegation (R. 423):

> "Oh, I don't know how I would describe the philosophy of the 15-man delegation from Dallas. We differ on a lot of things. We agree on a lot of things. I suppose we run the entire spectrum of what is generally referred to as the conservative to the liberal philosophy, a little heavy on the conservative side."

This hardly describes a delegation chosen with no consideration of appeal to Negro voters.

[30] What is mathematically or theoretically possible and what can be safely done in politics are obviously different things, and *Whitcomb* focuses on actualities not possibilities. It is almost certainly true that some members of the Democratic slate in a multi-member district will appeal to Negro voters more than others, just as some will appeal to any section of society more or less than others. It is also perfectly obvious that representatives elected from single-member districts of a predominately white constituency may make no appeal to black voters, just as representatives elected from single-member districts of predominately black constituency may make no appeal to white voters. But in this respect, Blacks are no different than "union oriented workers, the university community, religious or ethnic groups," 403 U.S. at 156, any of which may be theoretically ignored by successful candidates in certain elections in either single-member or multi-member districts where they constitute a minority of the voters. There was absolutely no evidence that white candidates endorsed by the DCRG "regularly" won county-wide races without appealing to the Negro vote. That is all that *Whitcomb* makes relevant.

erroneous,[31] and likewise irrelevant under *Whitcomb*.[32] The

[31] The trial court nowhere defines its "black ghetto" or identifies the "interests" of the "black ghetto." Admittedly there are areas of Dallas County that are populated predominately by black people, but nowhere does the evidence show, or the trial court find, a "ghetto," within the meaning used and approved in *Whitcomb*, 403 U.S. at 131 n. 8. Furthermore, there is in the record no showing whatsoever of any interest of the black community that is different from the interest of the white community. Such interests, if they exist, are not obvious. All large Texas cities have taken advantage of the Home Rule Amendment of the Texas Constitution [Article XI, § 5] and the statutes enacted pursuant thereto [Article 1165, et seq., Vernon's Texas Civil Statutes]. Generally, these provisions of state law give very broad power to the cities and leave to the legislature items of statewide interest. For example, Mr. Allen, one of the black plaintiffs and a member of the Dallas City Council, testified he was successful in getting the Dallas City Council to pass an open housing ordinance (R. 704, 705). He also testified he was successful in getting the city to undertake a flood control program (1.5 million dollars, 50% federal money, 50% city money) for a predominately black community (R. 705) and that the people of Dallas would undertake this sort of thing because it was a humane thing and the type thing, "That I believe the people of Dallas would respond to, no matter what the color is, and it just happened that these people are black." (R. 706).

Representative Holmes testified that his political philosophy differed from the DCRG on a number of things (R. 423) and that he and Representative Reed, a white legislator from Dallas County, tended to vote alike (R. 423). He described the Dallas multi-member delegation as running the "entire spectrum of what is generally referred to as the conservative to the liberal philosophy, a little heavy on the conservative side." (R. 423). Representative Holmes was asked (R. 429):

"Q. With respect to the sensitivity that I know that you have for the black community, do you feel that the other 14 members of the Dallas County team share this sensitivity with you?

"A. I think there are some members of the team who share that sensitivity. On the other hand, I don't think enough of the members share that sensitivity in the way that I would like to see them share it from the standpoint of how they vote and how they relate to the issues and how they actually seek to become informed as to the concerns and the needs of the black community."

fourth "finding" is not only against the preponderance of the evidence,[33] but is far from controlling under *Whit-*

While Representative Holmes testified that the present number one interest of the black community is single-member districts (R. 447) and that the black community's other interests are tax programs, quality education, vocational education, job opportunities, particularly in state agencies and other businesses throughout the state (R. 448) [all of general interest] and the opportunity for black people to be part of the decision making process, he admitted that Dallas does have county-wide interests in many areas (R. 459): described the diverse racial, religious and ideologic nature of the Dallas delegation (R. 457-458); admitted the DCRG has not applied pressure to influence his vote (R. 127) and that he has voted his conscience as much as if elected from a single-member district (R. 128).

A conclusion that black interests are never considered is not supportable on this record.

[32] There is nothing whatsoever in *Whitcomb* which would make the constitutionality of a particular multi-member district depend upon whether the interests of a particular segment of the voters is considered in the formulation of the "*entire* slate of primary candidates" chosen by a particular party. Since such a segment of the community would obviously have no complaint if a proportional number of the slated candidates were of its own choosing, it is difficult to see what claim it would have to demand that its interests be considered in the selection of the entire slate. Indeed it is impossible to imagine that the interests of all groups could be considered in the slating of all candidates.

[33] There is absolutely no evidence to support the trial court's conclusion that "the DCRG, without the assistance of black community leaders, decides how many Negroes, if any, it will slate in the Democratic primary." The DCRG has two black members on its twenty-five man Board of Directors. (R. 902) Rev. Brown, one of those black board members and a member of the Dallas County Democratic Executive Committee (R. 900), testified that Blacks do have a say in the composition of the DCRG slate (R. 904) and a full, working partnership in the DCRG (R. 910). While Mr. Allen testified that the black community had no say in choosing the candidates (R. 687, 691), he admitted that he had a part in choosing Joe Lockridge, a black, for the DCRG slate (R. 709), and there is no evidence whatsoever that the DCRG excludes its black members when it decides how the slate is to be made up. Nowhere in this case is there evidence to support the statement of the trial court that the DCRG's slate was limited to a "sole black candidate" or its conclusion that no black community leaders assist in deciding how many Negroes will be slated by the DCRG.

comb.[34] And the fifth finding is supported by the evidence only if the relevant evidence is that regarding the Dallas delegation's performance in the 1950's rather than the 1970's.[35]

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[34] The Court in *Whitcomb* did not suggest that the singular existence of any of the conditions which it found missing there would in and of itself condemn the use of multi-member districts. It is obvious that the Court was assessing the totality of conditions to determine the existence of dilution or cancellation of voting strength, and a finding only that Blacks do not have a say in determining the number of candidates slated by a particular party, even if supported by the record, would not necessarily mean that their vote will be diluted or cancelled by the use of a multi-member district. That would depend on a great many other factors including whether those whites who do have a say are sympathetic to the Black community's interests and depend on it for support, and whether Blacks can run and win without being slated by the party. The evidence is undisputed that there were Blacks and whites sympathetic to Blacks on the DCRG that did have a say, and that at least one Black ran and won without even knowing what the DCRG was.

[35] It is interesting to note that the trial court relies exclusively on judicial notice of activities occurring during the 1950's — twenty years ago. That Texas has a history of racial discrimination is established fact. That Texas has made great strides forward in the elimination of this discrimination is similarly established fact. Texas should not be judged now on the basis of conditions in the 1950's, and indeed the Dallas delegation should not be judged now on the basis of what was done or not done by an entirely different delegation twenty years ago. Except for the remote occurrences in the 1950's, there is absolutely no foundation for the conclusion that the Dallas delegation has performed poorly in representing black interests. Indeed, the only specific record evidence of either action or inaction by Dallas' multi-member legislative delegation is that the *whole* Dallas County delegation to the 1971 legislature was instrumental in getting the state highway department to change the design of a highway through a black community (Conrad R. 413, 416), "that one of the main reasons that those 15 members from Dallas County helped get that highway lowered through the Spence community was because the black community was a principal motivating factor in getting them elected in the November primary (sic)." (R. 416).

The trial court received all evidence tendered at trial, with the assurance to counsel that the court would consider only that evidence properly admissible.[36] The result is that the record is replete with hearsay, rank conclusions, and other matters inadmissible under accepted rules of evidence.

An analysis of the admissible evidence — what it does and does not contain — clearly demonstrates that the black community has not been "denied access to the political system" of Dallas County, the ultimate finding required by *Whitcomb*. Blacks serve and have served on the County's legislative delegation; they serve on, are consulted and have been slated by the DCRG; they hold numerous county-wide offices; they have influenced the action of the entire Dallas delegation. They participate and do so meaningfully and effectively. Whether their access to the political system is by grace or right, benevolence or political muscle, access they have: they are heard, they participate, they are represented. To hold that a minority's participation is not "effective" because not as "a matter of right" would be to invalidate the role of majority rule in American politics or invalidate each and every multi-member district in the nation. *Whitcomb* commands no such absurd result.

[36] "Judge Goldberg: I want to repeat once more, maybe it is the same colloquy but just to be sure, everybody understands it, this court is not going to consider anything that it deems irrelevant. We do think you will help the court a lot if you will simply try to keep as much of the matters relevant as possible instead of having a lot of argument. Let's just move along. We would hope that you would have every confidence in the court to the extent that we are not going to consider anything that we do not think is irrelevant, incompetent or material. I will say that again and again and again. As I said at the beginning, time is of extreme importance to everyone in this case. Somebody is going to want somebody else to say we are right or wrong, and I plead with you, once again, to keep that constantly in your mind. Now, proceed." (R. 76).

And to further hold that the State has the burden "of claiming effective participation" and must make its claim good by "showing that the interests of the black ghetto, like those of the white areas, are taken into consideration in the formulation of the entire slate," is to significantly misplace the burden of proof. That is precisely what the trial court did: it assumed the lack of opportunities to effectively participate, and required the State to prove the affirmative or effective participation on the part of racial minorities. Considering this, one can see how the court might have reached its conclusion. "But we have insisted that the *challenger* carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements." *Whitcomb* v. *Chavis,* 403 U.S. at 144. Thus the burden is not upon the State to prove that racial minorities have the opportunity to effectively participate in the election processes, but is upon the challengers to show that they do not. Nevertheless, the record preponderates that the black community is not excluded from participation in the political processes of Dallas County. A reading of the record discloses that the State sustained the burden imposed upon it by the trial court, but in any event, the challengers did not sustain the burden imposed upon them by this Court in *Whitcomb*. The only means of supporting the trial court's decision is on a *per se* basis, which has been consistently rejected by this Court, and absent a rule of *per se* invalidity, the multi-member district in Dallas County is not constitutionally infirm.

III.

MULTI-MEMBER DISTRICTING FOR BEXAR COUNTY DOES NOT DILUTE OR CANCEL THE VOTES OF MEXICAN-AMERICAN CITIZENS WHERE THERE ARE NO FINDINGS OF FACT TO SUPPORT A CONTRARY CONCLUSION AND WHERE THE MEXICAN-AMERICAN CITIZENS ARE NOT A NUMERICAL MINORITY.

The trial court's finding of constitutional infirmity with regard to Bexar County legislative districting is even less compatible with the standards of *Whitcomb* than the Dallas situation. The trial court discussed the economic and cultural deprivation suffered by Mexican-Americans, and their concentration in the area of San Antonio known as the Barrio. The trial court superficially disavowed any intention of guaranteeing representative seats in the Texas House of Representatives to Mexican-Americans[37] but then undertook to do just that,[38] without any finding whatsoever that the Mexican-Americans were excluded from the political processes[39] or that multi-member dis-

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[37] "Again, we are not to be understood as saying, and indeed specifically disavow any intention of implying that 'any group with distinctive interests must be represented in legislative halls if it is numerous enough to command at least one seat and represent a majority living in an area sufficiently compact to constitute a single member district.' Whitcomb, *supra,* at ..... No political, racial, or other interest group has any constitutional right to be successful in its political activities." (A.Jur.S. 56A).

[38] "Single-member districts in San Antonio will obviously be *of benefit in remedying the effects of past and present discrimination* against Mexican-Americans. If the voting percentages remain at 30% in the Mexican-American areas, for a short while after single-member districting, *at least the Mexican-Americans will have representation of their interests in the Texas House.*" (A.Jur.S. 56A) (Emphasis added).

[39] The trial court stated:

> "Mexican-American participation in the political process of Bexar County is markedly deficient. Of course, there are many types of political alienation, and mere lack of participation by a particular group in the political process does not necessitate corrective action. But, just as Courts have drawn appropriate *inferences* from the absence of Mexican-Americans from jury venires, *Hernandez and Muniz,* supra,

tricts in any way operate to cancel or dilute their voting strength. The lower court made no findings relevant to the guidelines of *Whitcomb*.

Appellants need not dispute that Mexican-Americans are economically and culturally deprived, nor need they dispute that Mexican-Americans constitute a "minority" in Texas, both numerically and to the extent of being protected by the Fourteenth Amendment. However, in Bexar County, Mexican-Americans are not a *numerical* minority, but constitute a plurality,[40] and given the stipulated facts that the rights to register and to vote have not been infringed in Texas or Bexar County, it is difficult to conceive how a multi-member district unconstitutionally operates to dilute or cancel their voting strength. Instead, the record clearly shows that the Mexican-American voting strength is diluted because only approximately 30% of the eligible Mexican-Americans avail themselves of the opportunity to register and vote.[41]

Part IV of the per curiam opinion demonstrates just how far courts have wandered into the political thicket and how divorced from judicial standards it is possible for them to become. It begins with the premise that "Chicanos", as a recognizable minority, require the protective intervention of the federal courts (A.Jur.S. 42A); then proceeds on the thesis that discrimination at other times and other places is a sufficient basis for judicial interference with the lawful political structure of the Bexar County Legislative district; and concludes that although: [t]he State action at issue

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so they *must* regarding political participation." (A.Jur.S. 50A) (Emphasis added).

This does not meet the *Whitcomb* guideline that "the challenger carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements." 403 U.S. at 144.

[40] A.Jur.S. 54A.

[41] *Id.*

here, the apportionment of Bexar County, did not 'cause' the low voter participation" (A.Jur.S. 55A), "Single-member districts in San Antonio will obviously be of benefit in remedying the effects of past and present discrimination against Mexican-Americans." (A.Jur.S. 56A). Because the facts of this case can support no charge of either attempt at dilution of voting power, or dilution of voting power, as a result of the multi-member district in Bexar County, the author of Section IV effectuated his own political preference.

The lower court characterized Texas as having "the most restrictive voter registration procedures in the nation" (A.Jur.S. 51A), and concluded that the "right to vote may be abridged as easily by making its exercise excessively difficult as by prohibiting its exercise entirely." (A.Jur.S. 53A). These conclusions are wholly unfounded in the record, since the parties specifically stipulated there had been no denial in Texas of the right to register and vote since 1961, and the record contains no evidence to the contrary. Moreover, even these conclusions do not go so far as to indicate that Mexican-Americans were *not allowed* to register and vote, as *Whitcomb* specifies. 403 U.S. at 149.[42]

The lower court pointed out that "an Anglo member of the House of Representatives from Bexar County was unable to identify any piece of legislation sponsored by any member of the Bexar County delegation at the last session of the Legislature to relieve or remedy the adverse conditions extant in the West Side." (A.Jur.S. 52A). However, there was no finding regarding "recurring poor perform-

[42] As recently as 1965 the then seven member multi-member House delegation from Bexar County consisted of three Mexican-Americans, three Anglo-Americans and one Chinese-American. The present San Antonio City Council is composed of nine members elected city-wide. The Council consists of three Mexican-Americans, one Negro and five Anglo-Americans (one of whom is a woman) (Barrera, R. 558). A number of Mexicans hold elective public office in Bexar County (Barrera lists them, R. 554-557).

ance by . . . [the Bexar County] . . . delegation with respect to . . . [the Barrio] . . ., nothing to show what the . . . [Barrio's] . . . interests were in particular legislative situations and nothing to indicate that the outcome would have been any different if the . . . [Bexar County legislators] . . . had been chosen from single-member districts." 403 U.S. 155.

There is some conflicting testimony that voting in Bexar County tends to split on racial lines,[48] but regardless of the conclusion to be drawn from this testimony, what difference does it make when the Mexican-Americans and Anglo-Americans are of approximately equal numbers, and there is no interference with the right to register and vote?

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[48] A detailed analysis of testimony about Bexar County is not necessary, but the statement of Section IV (A.Jur.S. 51A) that, "The record shows that the Anglo-Americans tend to vote overwhelming against Mexican-American candidates . . ." requires contradictions. The following testimony by Mr. Barrera is uncontroverted (R. 562):

"A. I have found this, whenever a candidate seeks to base his candidacy by an appeal to ethnic background, whether it is a majority group or a minority group, that the minority candidate is going to necessarily find that he is going to be short of votes when it is all over. If the appeal is based to qualification, to capability, to a determination to represent the people of the community as a whole, in whatever post a man seeks to be elected to, that this is lessened quite a bit. And, we have, of course, county-wide elections now of minority group representatives where it is not an issue and has not come to the fore and they have been elected."

Mr. Garza testified (R. 626, 627):

"Q. Do you feel that either the Mexican-American or the Anglo-American vote on purely ethnic background in San Antonio?

A. I think certain ethnic groups do. I wouldn't say the majority of the people do this.

Q. You mean certain people in each ethnic group?

A. In each ethnic group, yes.

Q. Do you have any particular basis in mind for your opinion that a certain element of each ethnic group does, and another element of it does not?

If the Mexican-American people of Bexar County registered and voted in the same proportion as do the black citizens of Dallas County, this part of the case would be frivolous. Surely this Court should not adopt the rule adopted by the trial court to the effect that the Constitution requires more than equality of opportunity to participate in the political processes.

That many Mexican-Americans suffer poverty need not be controverted; that they constitute an identifiable ethnic group, and that they have not been as active in political affairs as they could be similarly need not be controverted. However, absent evidence and findings of some facts showing infringement of their political rights, or some inhibitions to their right to participate in the political process, poverty, ethnicity, and inaction are no basis for judicial action with regard to apportionment. The federal courts should not embrace a rule that a disadvantaged group, regardless of numbers and access to the political processes,

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A. I didn't understand the question.
Q. Do you have any experiences of your own which would indicate to you that, say, Anglo-Americans will vote for Mexican-American candidates or vice versa?
A. Well, I think I have to look at my own race in this last city election and could pretty well tell you that my support came from the north side, approximately 60 boxes out of the north side, and, here again, I have to say that I concentrated on these 60 boxes.
Q. By work and money, you mean?
A. By work and money and energy, primarily, because Dr. Neilson was fairly strong on the west side of town and on the east side of town.
Q. The areas you are referring to that Dr. Neilson was strong in are predominantly Mexican-American and Black?
A. And Black. However, on the runoff I concentrated, once I saw the total picture, then I concentrated on most of the city, and I only lost 28 out of 227 boxes.
Q. Would you consider your race a practical illustration of practical politics in San Antonio?
A. You could do that if you wanted to."

is entitled to favored treatment in legislative districting. "The mere fact that one interest group or another . . . has found itself outvoted and without legislative seats of its own provides no basis for invoking constitutional remedies where, as here, there is no indication that this segment of the populaton is being denied access to the political system."[44]

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[44] *Whitcomb* v. *Chavis*, 403 U.S. at 154-55.

CONCLUSION

For the foregoing reasons, appellants respectfully pray that the judgment of the court below be reversed, and the redistricting plan submitted by the Board be declared to meet the requirements of the Fourteenth Amendment.

Respectfully submitted,

.....

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CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that three copies of the foregoing printed Appellants' Brief has this the ..... day of February, 1973 been served upon each counsel of record for appellees in accordance with Rule 33 of this Court, by depositing the same in a United States mail box, with first-class postage prepaid, addressed to said counsel at their post office addresses.

.....
Leon Jaworski

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-147

BOB BULLOCK, ET AL., *Appellants*

v.

DIANA REGESTER, ET AL., *Appellees*

On Appeal from the United States District Court for the Western District of Texas

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BRIEF FOR AMICI CURIAE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES AND TEXAS LEAGUE OF WOMEN VOTERS

INTEREST OF AMICI

The League of Women Voters of the United States is a non-partisan, voluntary association whose purpose is to encourage the informed and active participation of all citizens in government and politics. Open to all women citizens 18 years or older, the national League

has a membership of 160,000 in more than 1,360 local leagues throughout the United States, Puerto Rico and the Virgin Islands. The Texas League of Women Voters is an affiliate of the national League with approximately 4,300 members in 41 local chapters. From its inception, the United States League and its affiliates have worked at national, state and local levels to achieve equality of representation and the eradication of discrimination in voting.

In pursuit of these goals, amicus has long been especially concerned with reapportionment because it believes that fair apportionment is an absolute prerequisite of a democratic society, while unfair apportionment corrupts the political process and destroys confidence in it.

STATEMENT OF THE CASE

This is the second time in recent years that the apportionment and districting[1] of the Texas State legislature has been before this Court. The record in this case, seen in the light of Texas' history of congressional and legislative apportionment, permits only one conclusion; the plan challenged here was the result of a process which is a textbook example of how states should not be apportioned and redistricted, a process that was riddled with defects of constitutional significance. In short, Texas has not yet complied with the constitutional command of equality in voting repre-

[1] "Apportionment" refers to the allocation of legislative seats, "districting" to the drawing of boundaries. *Kilgarlin* v. *Martin*, 252 F. Supp. 404, 410, n. 1 (S.D. Tex. 1966), *reversed sub nom. Kilgarlin* v. *Hill*, 386 U.S. 120 (1967). Both are involved in this appeal. We shall follow the *Kilgarlin* court and call the whole process "apportionment."

sentation first applied by this Court in *Baker* v. *Carr*, 369 U.S. 186 (1962).

The story begins in 1963. A little more than a year after *Baker* v. *Carr*, the *Kilgarlin*[2] plaintiffs challenged the existing Texas apportionment. A three judge District Court declared the apportionment unconstitutional and ordered the legislature to reapportion constitutionally by August 2, 1965. *Kilgarlin*, 252 F. Supp. 411. The result was challenged again, as a racially discriminatory gerrymander; as an unconstitutional "crazy-quilt" mixing single-member, multi-member and floterial[3] districts, and as containing "unacceptable variations," in the population of districts, from the one man-one vote principle of *Reynolds* v. *Sims*, 377 U.S. 533 (1964). *Kilgarlin*, 386 U.S. 121-22.

The District Court found the floterial districts unconstitutional because of extreme disparity in population, 252 F. Supp. 419-21. It rejected the plaintiffs' other contentions, holding that they had failed to satisfy the burden of proof which the court imposed upon them. 252 F. Supp. 413-16, 428, 434-5. And it found "rational explanations" for the mix of single-member and multi-member districts, including "a desire to avoid cutting county lines" and a "policy" limiting the size of multi-member districts to 1,000,000 people and 15 representatives. 252 F. Supp. 443, 444.

This Court reversed *Kilgarlin*, n. 1, 386 U.S. 120 (1967). It approved the District Court's rejection of the floterial districts, and its holdings that the plaintiffs had not proved a racial gerrymander or an unconstitutional "crazy quilt." 386 U.S. 821. It disap-

[2] N. 1, *supra*.

[3] See *Kilgarlin*, 252 F. Supp. 419-424.

proved the District Court's assignment of the burden of proof on the population deviation issue. Following *Swann* v. *Adams*, 385 U.S. 441 (1967) this Court held that the state has the burden of justifying population variances of the size present in the 1965 Texas apportionment plan. 386 U.S. 122.

The Court also rejected the District Court's reliance on the state's "attempt to conform to the state policy requiring legislative apportionment plans to respect county boundaries wherever possible." The Court "was not convinced that the announced policy of the State of Texas necessitated the range of deviations between legislative districts which is evident here." 386 U.S. 123-4. Moreover, it found that the Texas policy permitted violation of county lines in order to conform to the one man-one vote principle, and that other apportionment plans had been presented "which respected county lines but which produced substantially smaller deviations from" one man-one vote. *Ibid.*

So the Texas legislature went back to the drawing board and eliminated the floterial districts. The 1970 census then required a new apportionment. The legislature was able finally to agree on a plan for reapportionment of the House but not of the Senate. House Bill No. 783, Ch. 981, Art. 195a-3, §§ 1-5 [1971] Vernon's Tex. Sess. Law Serv. 2974; *Graves* v. *Barnes*, 343 F. Supp. 704, 711 (W.D. Tex. 1972).[4] In such cases the matter is referred by the Texas constitution to a Legislative Redistricting Board whose members are, ex officio, the Lieutenant Governor (who presides over the Senate), the Speaker of the House, the Attorney

[4] The opinion below; amici cite to the Federal Supplement report.

General, the Comptroller of Public Accounts and the Commissioner of the General Land Office. Tex. Const. Art. III, § 28. The Board is required to "assemble" within 90 days after adjournment of the legislature and complete its plan within 60 days after that.

The 1971 legislature adjourned on May 31, 1971. The Board assembled on August 24, 1971, shortly before expiry of the 90 day period, intending to deal only with the problem of reapportioning the Senate. *Mauzy* v. *Legislative Redistricting Board*, 471 S.W.2d 570, 572 (Sup. Ct. Tex. 1971). Its 60-day life would end on October 23, 1971. In the meanwhile, however, a challenge had been filed to the legislature-drawn plan of reapportionment and redistricting of the House, and on September 16, 1971, the Texas Supreme Court declared the House redistricting plan void. *Smith* v. *Craddick*, 471 S.W.2d 375 (Sup. Ct. Tex. 1971). It found that the plan provided for "the wholesale cutting of county lines," *id.*, 471 S.W.2d 378. It thereby would violate Article III § 26 of the Texas Constitution which, the Texas Supreme Court held, forbids the creation of legislative districts which cross county lines. *Id.*, 471 S.W.2d 377-78. Of course this provision is subordinated to the U.S. Constitution and "a county may be divided if to do so is necessary in order to comply with the equal population requirement of the Fourteenth Amendment." *Id.*, 471 S.W.2d 377.

The Texas Supreme Court held that the plaintiffs had met their burden of showing that the plan violated Article III § 26 of the Texas Constitution by cutting county lines. 471 S.W.2d 378. The defendants—the Governor, Secretary of State and party and local officials—had the burden of showing that the cutting of county lines was necessary "to comply with the one-

man, one-vote decisions." But the defendants "offered no evidence. . . . If these districting requirements were excused by the requirements of equal representation, the [defendants] had the burden of presenting that evidence. They presented none." *Smith* v. *Craddick, supra*, 471 S.W.2d 378. So, on September 16, 1971, the plan was struck down.

The Legislative Redistricting Board, which had been in existence for nearly a month to reapportion the state Senate, was then asked to add the House to its labors. *Mauzy* v. *Legislative Redistricting Board, supra*, 471 S.W.2d 572. The Board declined, asserting that, a statutory plan having been passed, it lacked jurisdiction to do so and the judicial invalidation of the plan could not confer jurisdiction. In this impasse the Texas Supreme Court was asked for a mandamus. It held that the Board indeed had jurisdiction to reapportion the House because the legislature had failed to enact a valid plan, and "[a]n apportionment, which is invalid, for whatever reason, is no apportionment." *Mauzy, supra*, 471 S.W.2d 574.

The court was also asked to compel the Board to "apportion only into single-member districts." The court declined, for, it said, "apportionment involves the judgment and discretion of the Board." *Id.*, 471 S.W.2d 575. It assumed, however,

> that the Board will give careful consideration to the question of whether or not the creation of any particular multi-member district would result in discrimination by minimizing the voting strength of any political or racial elements of the voting population.

Ibid.

The Texas Supreme Court issued its decision in *Mauzy*, ordering the Board to reapportion the House, on September 27, 1971. On October 15, 1971, the Board adopted and issued a plan for reapportionment of the Senate. On October 22 it adopted and issued a plan for reapportionment of the House. The Senate plan created 31 single-member districts. The House plan divided 150 seats among single-member districts and 11 multi-member districts. While it divided Harris County (Houston) into 23 single-member districts it kept Dallas one at large, 18-member district and did the same in San Antonio and all other metropolitan areas.

Proceedings in This Action

Four lawsuits were promptly filed. One challenged the Senate plan for Harris County (Houston). Two challenged the House plan as providing for excessive deviations in population, and as perpetuating discrimination by means of the multi-member districts. A fourth challenged the House plan and the Senate districts in Bexar County (San Antonio). *Graves* v. *Barnes, supra,* 343 F. Supp. 708-10. A three-judge court was convened and the cases were consolidated. Two thousand pages of depositions were taken and a voluminous documentary record compiled. Trial of the cases consumed 3½ days and a trial transcript of 1000 pages was created.

The District Court decided the case on January 28, 1972. It rejected the challenges to the Senate plan and upheld the challenges to the House plan. One judge also would have declared the Senate plan for Harris County an unconstitutional racial gerrymander. 343 F. Supp. 744-49. One judge dissented to voiding the House plan in its entirety for unacceptable population devia-

tions from equality. 343 F. Supp. 749-53. But all three concurred in voiding the multi-member districts in Dallas and Bexar Counties.

The District Court found that the State had failed to justify either deviations from population equality or the difference between single-member Houston and multi-member Dallas (and other metropolitan areas) in the House plan by the existence and application of a consistent state policy. It found that the plan could not be justified by the Texas constitutional policy against cutting county lines, because 19 county lines were cut in the plan adopted, without explanation. 343 F. Supp. 714-15.

It found that in leaving Dallas, with 18 members and 1.3 million population, at large, the state violated its own policy, announced and relied on by the District Court in *Kilgarlin*, of dividing districts with more than 15 members and one million population. 343 F. Supp. 716-17, 723. It found that the Board had failed to follow the popular will in Dallas, 343 F. Supp. 721. It found generally that the procedures followed by the Board were so defective as to rob its work of the judicial deference to which a legislative enactment would be entitled. 343 F. Supp. 716-17.

The court found the Texas multi-member districts discriminatory. They discriminated in favor of wealth because it is much more costly to run in a large multi-member district than in a single-member district. 343 F. Supp. 720, 721. Two peculiarities of the Texas scheme, a requirement of a majority vote and the requirement of running for numbered "places" or slots, highlight the racial issue and permit a majority to submerge a minority. 343 F. Supp. 725. And specifically in Dallas and Bexar counties the court found

facts, in documented racial preference in elections and (in Dallas) in the existence of a predominantly white slate making machine, which aggravated the discriminatory effect of multi-member districts in those localities. *Id.*, 726-27; 731-32.

In short the court found that the plans "would operate to minimize or cancel out the voting strength of racial minority elements of the voting population." *Graves* v. *Barnes*, 405 U.S. 1201, 1202 (1972) (Powell, Circuit Justice).

The court ordered the state to reapportion before July 1, 1973. For the 1972 elections, however, the court itself divided Dallas and Bexar Counties into single-member districts. The State sought a stay of this order, which Mr. Justice Powell denied on February 7, 405 U.S. 2101. Among other reasons, Justice Powell referred to the "careful attention" to the case "by the three-judge court, the members of which were 'on the scene' and more familiar with the situation than the Justices of this Court," and to the District Court's "conscientious application of principles enunciated by this Court." 405 U.S. 1204.

The State appealed. Only one of the Senate challenges was appealed and the District Court was affirmed per curiam, *sub nom. Archer* v. *Smith*, — U.S. —, 93 S. Ct. 62 (1972). So only the apportionment of the Texas House of Representatives is before the Court.

The Board's Proceedings

The District Court, in assessing the process by which the Board adopted the reapportionment plan, concluded that the Board did not do "the sort of deliberative job contemplated by *Reynolds* as worthy of judi-

cial abstinence." 343 F. Supp. 717. The delicacy of the court's phrase considerably understates the defects in the Board's "deliberations."

As the Court found, the "Board never really acted as a Board. . . ." There was no concert among the members "with regard to the constitutional principles or even to any lesser policy guidelines." The Board

—met "for hearings only 4 times;"

—one member "did not pay much attention to the hearings;"

—"the full board did not even meet to approve the final plan; it was merely passed around;"

—"only 3 members of the board signed both plans;"

—"At no point in its deliberations did the board even debate or discuss the general issue of single member districts vs. multi-member districts."

343 F. Supp. 716.

Appellant's brief criticizes the court for faulting "not so much the plan as the method by which it was adopted," for requiring that the reason for population deviations from equality "be fully debated and explained" and for not giving weight to "the process of legislative compromise."

Now let us look at what happened.

The Cast

The Board consisted of the Lieutenant Governor, Ben Barnes, the Attorney General, Crawford Martin, the Lands Commissioner, Robert Armstrong, the Comptroller, Robert Calvert and the Speaker of the

House, Gus Mutscher. Barnes had been the Speaker of the House which had enacted the apportionment plan struck down in *Kilgarlin* and had been a defendant in *Kilgarlin, supra,* 386 U.S. 123, n. 2. Martin had been Secretary of State at that time, was also a defendant in *Kilgarlin, supra,* 252 F. Supp. 404, and had been a state senator before that (Martin Deposition, p. 6) Mutscher (recently convicted of bribery in the Sharpstown bank scandal [5]), had been chairman of the House committee that wrote the plan struck down in *Kilgarlin,* 252 F. Supp. 423. Calvert had been Comptroller for 23 years and had been in the Comptroller's office since 1930 (Calvert Dep. 6). Armstrong, elected Lands Commissioner in 1970, had been a member of the House since 1963 (Armstrong Dep., 6).

The two principal staff people were Robert Spellings, Barnes' executive assistant (Spellings Dep., 7) and Robert E. Johnson, Executive Director of the Texas Legislative Council, a statutory body of the state legislature headed by the Lieutenant Governor (Barnes) and the Speaker (Mutscher) with a staff usually engaged in drafting legislation (Johnson Dep., 7). Johnson had been a state representative from (and apparently a segregationist leader in) Dallas County (*id.*, 59-60; Pl. Ex. 77, 87).

How the Board Operated

The Board actually met only eight times. Some of these meetings were mere formalities, at which the Board adjourned without taking any action except to elect Martin chairman (Armstrong Dep., 10; Martin Dep., 8; *cf.* Calvert Dep., 8). Only four of the meet-

[5] State v. Mutscher et al., No. 4242-B, 104th District Court, Taylor County, Texas.

ings—all public—were of substance: public hearings on September 30 and October 6, and the meetings to adopt the Senate plan on October 15 and the House plan on October 22. Barnes missed the crucial October 6 meeting, which was wholly devoted to testimony in support of single-member districts in Dallas County (Armstrong Dep., 12-14; Barnes Dep., 7; 16-17 *infra*).

The Board otherwise never met at all, held "no executive sessions" (Martin Dep., 9, 120; Barnes Dep., 94). Indeed, the members troubled themselves little to learn each others' views (Martin Dep., 18; Armstrong Dep., 32-33, 44; Barnes Dep., 100, 136, 141; Calvert Dep., 11). They never took a vote on any of the substantive issues involved in reapportioning the legislature, (Martin Dep., 24, 115; Barnes Dep., 56, 98, 100; Armstrong Dep., 16). They didn't even debate or try to resolve the issues (Barnes Dep., 149; Martin Dep., 105; Armstrong Dep., 32).

Armstrong tried unsuccessfully to bring the matter of single vs. multi-member districts to a head at the Board's October 15 meeting but received only vague answers (Armstrong Dep., 12-13). The Board

> made no decisions as to the other [than Harris] metropolitan counties . . . they were, in effect deciding that those counties were to be given multi-member districts. . . .
>
> They just left the overall state plan drawn as it was, with Harris County divided, and with the others undivided.

(Johnson Dep., 25-27)

The crucial issue of single vs. multi-member districts was—except for Houston (Barnes Dep., 121)—never

decided at all but went by default. Dallas, for example, "never was really faced directly" (Barnes Dep., 95-96, 99). There was "just an assumption that if we had . . . a vote, that the vote would probably be three to two against" single-member districting (Barnes Dep., 98), or two against two, with Martin undecided (*id.*, 56), but for Barnes this was no more than an "intuitive judgment" (*id.*, 100).

In fact, not only was there no consensus, but there was decisive misunderstanding by members of each others' true views. Barnes and Armstrong knew that the two of them were for single-member districts throughout the state (Barnes Dep., 94; Armstrong Dep., 16), and Armstrong thought that if Barnes had been at the October 6 meeting a vote then would have been three to two *for* single-member districting with "time enough" to draw the lines (Armstrong Dep., 16; 16, 18, *infra*). Barnes, on the other hand, was afraid Martin was for multi-member districts, although Martin never had made his position clear (Barnes Dep., 56). In fact Martin "would have signed a plan either way," "had no fixed view . . . an open mind" (Martin Dep., 30-32, 43, 45-46; Spellings Dep., 20).

Barnes also felt that Mutscher and Calvert were strong for multi-member districts. But Barnes did not hear Calvert's views from Calvert; "he was quoted in the paper to that effect" (Barnes Dep., 136). In fact Calvert was willing to "let the other members of the Board take the lead . . . the Attorney General [Martin] and Mr. Barnes came up with a plan and [he was] willing to go along." (Calvert Dep., 66). And Mutscher, it turned out, opposed and refused to sign the final plan *because* he was opposed to leaving Dallas County at large; he wanted to cut it into six three-

member districts or three six-member districts (Mutscher Dep., 8-10). Mutscher, at the end, confessed himself "baffled" at the seeming irrationality of the plan (*id.*, 29).

As we have seen, the Board never deliberated as a body. So it was that Calvert relied on the staff "greatly;" he himself gave no consideration whatsoever to racial, ethnic or political factors, the interests of minorities, the common interest of the people of proposed districts, voting records or the dilution of minority voting strength (Calvert Dep., 19-28, 58). He gave "very little consideration" to the testimony presented on October 6, and regarded it as "all this crap" (*id.*, 63-66). And at the end he did not know what the plan he had signed did with Dallas County (*id.*, 47).

The only policy decision that was made was made by the Board "when they adopted the bill" (Johnson Dep., 22). As we shall see, that "policy decision" was already made, not by the Board, but by lack of time and lack of direction, guidelines or standards. And it was squarely contrary to the overwhelming weight of the evidence before the Board.

The Evidence Before the Board

The Board held two public hearings on the House plan, on September 30 and October 6. Members of the legislature, political figures, political scientists, a law professor, a church official and a professional polltaker testified.

On September 30, four members of the Texas House testified in favor of single-member districts (Tr. Sept. 30; 4-36). One, Rep. Reed, submitted a single member plan for Dallas (*id.*, 11-12). He testified that the at-

large system discriminates against minorities (*id.*, 7-9). He pointed out that if single-member districts were adopted "it would be very difficult to draw lines where the blacks would not elect a minimum of three and possible four members of the state legislature" (*id.*, 6). Board member Armstrong agreed (Armstrong Dep., 26, 52).

Rep. Blythe pointed out that it would be unconstitutional to single-member Harris County and not Dallas (Tr. Sept. 30; 23). This was echoed by Board members Armstrong and Barnes (*id.*, 65, 66). Martin, however, claimed a justification for the difference in the fact that Harris County had more highways, which made it easier to divide (Martin Dep., 24-25) (although in this respect Bexar County was still "further along", *id.*, 92).

Four representatives from Dallas opposed single-member districts, as did the chairman of the Dallas Democratic Executive Committee (which controlled the delegation) (Tr., Sept. 30; 43-62). The Republican chairman favored single-member districts (*id.*, 69-71) and pointed out that 298 of 302 witnesses who had appeared in Dallas before the House Redistricting Committee in hearings on reapportionment earlier that year had supported single-member districts (*id.*, 72). And it seemed at the hearing that the Board indeed favored single-member districts throughout the state (*id.*, 14, 36, 65, 66).

The October 6 hearing consisted entirely of testimony in favor of single-member districts in Dallas. Polls of the county showed a preference for single member districts of 49%-31% in 1966, rising to 58%-31% in January 1968 and 61%-27% in September

1968 (Tr., Oct. 6; 5, 72). Notably, Senator Oscar Mauzy testified that

> Mr. Johnson has advised me that he and his staff can effectively draw a single-member district plan in about two weeks—

and there were more than two weeks left to go. (*id.*, 46.) Mauzy submitted his own plan (*id.*, 74), and testified that the black elected officials in Dallas all favored single member districting (*id.*, 73-74).

The Board was presented with considerable evidence on the increased cost of running at large. Rep. Blythe compared the cost of running at large, $40,000, with running in a single-member district, $4,000 to $8,000 (Tr. Sept. 30; 20). A single Dallas County-wide mailing was estimated to cost $100,000 (Tr. Oct. 6; 36) and the total cost to run a complete campaign at large in Dallas was estimated at $180,000 (*id.*, 78-79). Barnes (Barnes Dep., 89, 131, 143), Armstrong (Armstrong Dep., 23) and Mutscher (Mutscher Dep., 52-55) all agreed.

While Dallas' people generally (Tr. Oct. 6; 5, 72; and see the correspondence Exhibits to the Martin Deposition) and the black community in particular (*id.*, 73-77; Martin Dep., 54) favored single-member districting, their views seemed to be outweighed by the "business-men" (Martin Dep., 55-56, 60; Calvert Dep., 44). Martin, at least, gave no weight to the Dallas polls (Martin Dep., 89-91). But the Board was certainly aware of one thing: anything but single-member districting would result in litigation (Tr., Sept. 30; 9, 35; Tr., Oct. 6; 52).

The "Creation" of the Plan

As we have seen, the Board had originally convened to deal only with the Senate. It was ordered to reapportion the House on September 27, after it had been in existence for more than half of its sixty day life (p. 6, *supra*). Nevertheless, except for the public hearings on September 30 and October 6, the Board did not even take up the question of the House until after the Senate plan was adopted on October 15. There was then just a week to go (Armstrong Dep., 16; Spellings Dep., 34).

Therefore one of the principal factors that caused the retention of multi-member districts in Dallas, Bexar and other metropolitan areas was lack of time. The Board had 23 days from the date of the *Mauzy* decision (Barnes Dep., 112) and "it could have been possible within the time left to come up with a single member" plan "for all the major metropolitan areas" (*id.*, 128; see p. 16 *supra*). Johnson said it would be "difficult" but it could have been done (Barnes Dep., 128). But the time was not used. With less than two weeks to go, Spellings told Martin that to divide the metropolitan areas "would be a terrific burden . . . from a time standpoint." On October 15, it was "tough" because the staff didn't "have the expertise" to draw a single member plan (Armstrong Dep., 26-28; Spellings Dep., 20). Still later it was to be "practically impossible" (Spellings Dep., 54-55). Armstrong "could never get a clear answer from the staff people" about whether "there was time to do it all," although there obviously had been time "to do Harris County" (Armstrong Dep., 18). In short, the staff's claim that there wasn't time to draw a single member plan "was a large factor" in a feeling that members of the Board seemed to have "that maybe it was too late to insist on

single member." (*id.*, 29). They "didn't have time to debate the [single-member] issue. We had to get the job done." (Barnes Dep., 149).

To "get the job done" the Board set its staff to work—but without any specific instruction or guidelines "except to follow the law" (Martin Dep., 34-35). The staff was never instructed on what it was to do about Dallas County or the other districts that were at-large in the House plan the legislature had enacted (*Ibid.; id.* 36, 39, 42, 88, 89). Martin gave the staff no more guidance than to follow "the Supreme Court decisions and the census tracts" (Martin Dep., 43), although Calvert felt that by electing Martin chairman they had delegated to him the responsibility to instruct the staff. Barnes did no better. As of October 10 "the staff still had no guidelines;" except for Harris County the staff had not yet "been advised whether to go for single or multi-member districts" (Barnes Dep., 115; see *id.*, 20). Armstrong did not think "anybody felt the need to instruct" (Armstrong Dep., 22).

The staff felt itself at sea. They "received no instructions one way or the other from any member of the redistricting Board as regards the treatment of Dallas, Tarrant and Bexar;" there was "no Board action" to give them "instructions what counties should be multi-member" (Johnson Dep., 79, 73). When the Board said "cut them up," as with Harris County, they "cut them up;" when the Board was silent, as with Dallas and Bexar, they didn't "cut them up" (*id.*, 74; see also *id.*, 17-21, 28; Spellings Dep., 19).

The staff received no instructions or guidelines not to minimize or dilute the voting strength of minorities (Johnson Dep., 28-9; 38-40, 51; Spellings Dep., 38-43,

44-46). Johnson and his legislative council staff, while familiar with minority population concentrations, never did "consider what the effect of the plan" was "going to be on the Mexican-American and Black areas" and were not "concerned that [they] might wind up with a plan that might dilute or minimize or cancel out the voting strength of those particular groups" (Johnson Dep., 32). Nor were they instructed to do so (*id.*, 35). Spellings never considered minority voting problems or any of "an amazing amount of data" on minorities that the House Redistricting Committee and its staff had put together (Spellings Dep., 42; 38-41), or even census data on black and Mexican American population concentrations (*id.*, 44-46). In short they didn't consider minority groups "top, side and bottom" (Johnson Dep., 40).

The staff in fact did all the work (Barnes Dep., 18-19; Johnson Dep., 13-14). It was their plan which was adopted (Martin Dep., 33). Yet "no special effort" was made "to be sure that the staff would . . . follow constitutional guarantees" (Armstrong Dep., 23). Without guidance, they sometimes followed the House plan drawn by the legislature (Johnson Dep., 14). The Texas Supreme Court's mandate to the Board, *supra* p. 6, to give "careful consideration" to whether multi-member districts would result in "discrimination by minimizing the voting strength of . . . political or racial elements" was ignored.

The job was done in a rush. The deadline for Board action on the House plan was Friday, October 22. Spellings began work on Tuesday, October 19 (Spellings Dep., 9-10). He drew the state map Tuesday evening and finished it Wednesday morning, drew the single member districts in Harris County Wednesday

night and presented the plan to the Legislative Council Thursday afternoon (Spellings Dep., 25-26, 28-29). Spellings, with only one assistant, redistricted the entire state in 48 hours; 24 hours were spent in checking populations, the plan was given to the members of the Board at 2:30 p.m. on Friday and by 4:00 p.m. three of them had approved it (Spellings Dep., 29, 32-33).

There were two reasons why Spellings' map districted Dallas, Bexar and other metropolitan areas at large. Spellings didn't "think there were the votes on the Board for single-member districts," although he had discussed this only with Armstrong—who was pro-single member districts (Spellings Dep., 18-19, 35). And, probably most important, he and his assistant Hooser had tried to draw single-member districts for Dallas and gave up "because it was just too complicated" (Barnes Dep., 87). None of the Board members had more than 48 hours to consider the proposed plan.[6] Martin, for example, did not know until he first saw the map on Tuesday that Dallas was to be at large (Martin Dep., 41-42) and he "consented to it at that time." Barnes made no changes in the final draft; it was difficult for him "to spend a great deal of time getting involved in details" (Barnes Dep., 48-49).

Spellings took the plan around, lining up the members' votes. He told Martin that Barnes and Calvert were "agreeable" (Martin Dep., 46-47, 86-87), Martin signed and the plan was adopted. As Barnes testified, by this time:

> The best interest might be served for us to go ahead and get this bill approved and let the legis-

[6] Armstrong had 48 hours (Armstrong Dep., 19), Mutscher 6 to 8 (Mutscher Dep., 23), Martin 24 to 48 (Martin Dep., 40), Barnes 36 (Barnes Dep., 50).

lature come back hopefully in 1973 and draw individual districts.

(Barnes Dep., 101).

That is exactly what the District Court's judgment has done.

Epilogue

This Court's refusal to stay the District Court's order dividing up Bexar and Dallas counties meant that in November 1972 representatives ran in those counties in individual districts. The predictions that single-member districting would .increase minority representation, *supra* p. 15, were borne out, providing *post hoc* proof that the multi-member system was indeed discriminatory.

In Dallas, there had never been more than one black legislator, and none at all before 1966 (Pretrial Stipulation). In the 1972 elections three blacks were elected. In Bexar, one Mexican American had been elected in 1961, re-elected in 1962 and defeated in 1964; a black had run and lost in 1969. There was a single Mexican American in the House from Bexar in 1971 (Trial transcript, 538). In 1972, four Mexican Americans and a black were elected.[7]

SUMMARY OF ARGUMENT

The court below based its rejection of Texas' plan on two grounds. First, the deviations from population equality and the difference in the treatment of Houston

[7] The election results are certified. Official Canvass of the General Election, November 24, 1972, Board of Canvasser's Office of the Secretary of State, State of Texas. The four Mexican Americans elected in 1972 in San Antonio were Robert Vale (re-elected) Matt Garcia, Joe Hernandez and Frank Madla. The black was G. J. Sutton. In Dallas the three blacks elected were Eddie Bernice Johnson, Paul Ragsdale and Samuel B. Hudson III.

from the other major cities in Texas were inexplicable. Deviations and differences alike were unrelated to any rational state policy consistently applied. These findings are overwhelmingly supported by the record in this case. Never, so far as any record shows, has a state been subjected to such a capricious, haphazard and undirected procedure for the drawing of a reapportionment plan. In these circumstances it is not surprising that neither the State's own earlier policies nor any other consistent policy were applied, and that the plan spewed out by this process was a coat that fit no one.

Second, the plan's creation of multi-member districts, in the context of Texas' history of discrimination against its two main minority groups, Negroes and Mexican Americans, is itself discriminatory. This Court's decision in *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), expressly left open the situation present here. Here the record shows that the use of multi-member districts in Texas operates "to minimize or cancel out the voting strength of racial . . . elements of the voting population." Here Texas has a recognized history of racial discrimination in voting, the effects of which linger still. In Dallas a strong, white-dominated political machine has served to keep Negro representation at a bare minimum. In Bexar County racism defeated Mexican-American candidates who dared to run. In all multi-member districts the cost of running, so much higher than in an individual district, has fenced out minority (and therefore poorer) candidates.

The District Court's judgment was right. It should be affirmed.

ARGUMENT

I. The District Court Correctly Found That the Deviation in Population and the Differences in Multi- and Single-Member Districting Had No Rational Basis

Ever since *Reynolds* v. *Sims*, 377 U.S. 533 (1964), this Court has required that state reapportionment plans reflect "as nearly . . . as is practicable . . . substantial equality of population among the various districts. . . ." *Id.*, 577-78. While this standard does not imply a rule of precise mathematical equality, it does require that, in each case, the State make "an honest and good faith effort" to achieve the "overriding objective" of population equality. *Ibid.* This Court has stressed that all apportionment schemes—whether state or congressional—must adhere to the following principles: 1) they must be based "substantially on population;" 2) in no instance may the "population principle [be] diluted in any significant way;" 3) any deviations from population equality must be minor and must be based on "legitimate considerations incident to the effectuation of a rational state policy." *Reynolds* v. *Sims, supra*, 377 U.S. 578-79.

The crucial issue in all reapportionment cases is not the size of the population variance. It is, rather, whether the plan itself reflects a "good faith effort" to minimize these deviations, and is the result of a rational, consistently applied policy. There is no automatic point "at which population variances suddenly become *de minimis.*" *Kirkpatrick* v. *Preisler*, 394 U.S. 526, 531 (1969). To rule otherwise would vitiate the "fundamental goal" of achieving equal population "as nearly as practicable."

As the Court explained in *Kirkpatrick*:

> The whole thrust of the "as nearly as practicable" approach is inconsistent with adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case.... [T]he "as nearly as practicable" standard requires that the State make a *good faith effort* to achieve precise mathematical equality. See *Reynolds* v. *Sims*, 377 U.S. 533, 577 (1964).

394 U.S. at 530 (emphasis supplied).[8]

Each apportionment scheme must be scrutinized in the context of conditions existing in its particular state. See *Reynolds* v. *Sims, supra.* A plan may be based on considerations which, although valid in one state, may be held invalid in another because of the different circumstances there. *Reynolds* v. *Sims, supra,* 377 U.S. 578; *see, e.g., Burns* v. *Richardson,* 384 U.S. 73, 93-97 (1966). There are, in short, no magic formulae and no

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[8] Although *Kirkpatrick* was concerned with congressional districting, the Court invoked *Reynolds*, a state apportionment case, to support its holdings. The Court's reasoning is, in any event, equally applicable to state apportionment plans. The "as nearly as practicable" standard and the requirement of a "good faith effort" have long been applied to state apportionment schemes. In short, "there is no reason to believe that the same principles are not applicable to state legislative districts. . . ." Comment, *Effective Representation and Multi-Member Districts,* 68 MICH. L. REV. 1577, 1591 n. 51 (1970). The lower courts have generally considered *Kirkpatrick* relevant in scrutinizing the validity of state apportionment plans. See, e.g., Kelly v. Bumpers, 340 F. Supp. 568, 571 (D. Ark. 1972) *appeal filed,* No. 72-166, July 31, 1972; Sims v. Amos, 336 F. Supp. 924, 933 (M.D. Ala. 1972); *aff'd sub nom.* Baxley v. Sims, — U.S. —, No. 72-171, (Oct. 24, 1972); *Twiggs* v. *West,* — F. Supp. — (D. S.C. 1972) Mem. Op. at 4-5, 8 n. 18. And this Court has indicated support for that view Ely v. Klahr, 403 U.S. 108, 111 (1971).

magic numbers which will automatically immunize a plan from constitutional infirmity.

Under these standards, the Texas apportionment plan for its House of Representatives must fall. According to the State's calculations, the total deviation shown is 9.9%. The actual figure may well be substantially higher.[9] But even assuming 9.9% is the correct number, while this deviation might be upheld in other circumstances it is impermissible here.[10] Likewise impermissible is the distinction between the single-member districts in Harris County and the multi-member districts in the other major metropolitan areas.

The stated justification for the population deviation in the plan was the state policy of not cutting county lines, *Smith* v. *Craddick, supra,* 471 S.W.2d 375; Appellant's Br., 3-4, 18-20. The only possible justification for the distinction between Harris County and the rest of the state was a claimed state policy of cutting up

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[9] A more accurate estimate of the total population variance in the House plan is 24.3%. The State's method of calculation, which was questioned by the District Court, is of doubtful validity, as it uses a computation system disapproved in Kilgarlin v. Martin, 252 F. Supp. 404 (S.D. Tex. 1966), *rev'd on other grounds sub nom.* Kilgarlin v. Hill, 386 U.S. 120 (1967), and which is, in any event, squarely inconsistent with the *Reynolds* standard of representation.

[10] The fact that this Court upheld a larger deviation in Abate v. Mundt, 403 U.S. 182 (1972) [11.9%] is irrelevant. As the Court emphasized in that case, the *Abate* deviations sprang from a justification rational in the particular circumstances of that case. Nor is it helpful to point out that in other cases where apportionment plans have been held unconstitutional, the deviations were often greater than 9.9%. See, e.g., Sims v. Amos, 336 F. Supp. 924 (M.D. Ala. 1972), *aff'd sub nom., Baxley* v. *Sims,* — U.S. —, No. 72-171 (Oct. 24, 1972) [24.28%]; Howell v. Mahan, 330 F. Supp. 1138 (E.D. Va. 1971) [16.4%]; Wells v. Rockefeller, 394 U.S. 542 (1969) [13.1%]. These cases do not turn on the numbers themselves, but rather on the rationale behind the numbers.

only districts with more than 1,000,000 population and 15 members, *Kilgarlin, supra,* 252 F. Supp. 443, 444. As the District Court found, neither policy was in fact followed, *supra* p. 8.

A. Deviations in Population

The story of the creation of the House plan is told in detail *supra* pp. 10-22. While there is no evidence that the Board and the staff intended to create the resulting population deviations, "good faith" as defined in *Kirkpatrick, supra* pp. 23-24, requires some minimum attention and care. The sorry record of the Legislative Redistricting Board fails to meet even a minimum standard. Texas has failed to "articulate acceptable reasons for the variations," *Swann* v. *Adams,* 385 U.S. 440, 443-44 (1967), the deviations are not "rationally justifiable," *Lucas* v. *44th Colorado Gen. Ass.,* 377 U.S. 713, 735 n. 27 (1964), and the State employed no "orderly or objective method," *Kirkpatrick* v. *Preisler, supra,* 394 U.S. 537 (concurring opinion). The plan "has no rational basis," *Davis* v. *Mann,* 377 U.S. 687, 694 (1964) (separate opinion of Stewart, J.). It "reflects *no* policy but simply arbitrary and" (in this case particularly) "capricious action." *Baker* v. *Carr,* 369 U.S. 186, 226 (1962) (emphasis in original).

B. Single and Multi-Member Districts

The only justification given for dividing up Harris County but not Dallas, Bexar or other metropolitan areas was that highways made it easier to divide Harris, *supra* p. 15. In fact, as we have seen, the decision was made utterly by default; the Board never really decided what to do about Dallas and the rest of the multi-member districts, *supra* pp. 18-22. The scheme on its

face thus violates the *Reynolds* warning against plans that are "crazy quilts, completely lacking in rationality," 377 U.S. 568, and ignores the rule that reapportionment plans must be "free from any taint of arbitrariness or discrimination." *Roman* v. *Sincock*, 377 U.S. 695, 710 (1964).[11]

II. In the Circumstances of This Case, Multi-Member Districts in Dallas and Bexar Counties Operate To Dilute the Voting Strength of Racial Minorities

A. The Constitutional Standard

Multi-member districts are not constitutionally permissible in all "instances or under all circumstances." At-large districting is invalid whenever it operates *"designedly or otherwise"* to "minimize or cancel out the voting strength of racial or political elements of the voting population," *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965); *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966) (emphasis added); that is, wherever there is evidence that members of a group have "less opportunity than . . . [others] to participate in the political

[11] State courts have looked with suspicion on plans, like Texas', which create a hodge-podge of single and multi-member districts. Absent a reasoned basis for such scheme, they cannot withstand constitutional scrutiny. Kruidenier v. McCulloch, 142 N.W.2d 355, 368 (1966) (Sup. Ct. Ia.) [reapportionment plan inexplicably making one county a multi-member district while dividing all other counties into single-member districts held invalid]; Drew v. Scranton, 229 F. Supp. 310, 326 (M.D. Pa. 1964), *vacated and remanded on other grounds*, 379 U.S. 40 (1964) [where 14 large counties were divided into single-member districts while 15 other large counties were inexplicably arranged into a "crazy quilt pattern of one, two, three and four multi-member districts," the plan was invalid]; see Butcher v. Bloom, 415 Pa. 438, 203 A.2d 556 (1964) ("[A] legislative scheme which creates single-member districts and multi-member districts in an arbitrary manner [is] objectionable." 203 A.2d 573).

processes and to elect legislators of their choice." *Whitcomb* v. *Chavis*, 403 U.S. 124, 149 (1971).

This Court has been unprepared to void multi-member districts where the evidence of harm has been "highly hypothetical,"[12] where a group has simply shown political defeat at the polls[13] or where there has been reliance on mere "conjecture as to the effects of multi-member districting rather than demonstrated fact.[14] But at the same time, the "extremely objectionable feature[s]" of at-large districting, *Lucas* v. *44th Colorado Gen. Ass.*, 377 U.S. 713, 727 n. 13 (1964),[15]

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[12] *Fortson* v. *Dorsey*, *supra*, 379 U.S. 437.

[13] *Whitcomb* v. *Chavis*, *supra*, 403 U.S. 153.

[14] *Burns* v. *Richardson*, *supra*, 384 U.S. 88. "Speculations do not supply evidence that the multi-member districting was designed to have or had the invidious effect necessary to a judgment of the unconstitutionality of the districting." *Id.*, 88-89.

[15] In Reynolds v. Sims, 377 U.S. 533 (1964), this Court remarked on the "practical problems inherent in the use of multi-member districts." *Id.*, 579 n. 58. In *Lucas*, the Court labelled Colorado's multi-member county scheme "debatable" (although not necessarily "constitutionally defective.") 377 U.S. 732; 731 n. 21. The Court especially questioned the allocation of 17 representatives and 8 senators at large to Denver, noting, *inter alia*, the difficulties that would be encountered in analyzing an especially "long and cumbersome" ballot. *Id.*, 731.

> In *Burns*, the Court indicated that an invidious effect [might] more easily be shown if . . . districts are large in relation to the total number of legislators, if districts are not appropriately subdistricted to assure distribution of legislators that are resident over the entire district, or if such districts characterize both houses of a bicameral legislature rather than one.
>
> 384 U.S. 88.

The Court also noted that a minority might demonstrate its submergence by showing that "by encouraging block voting multi-member districts diminish the opportunity of a minority to win seats." *Id.*, 88 n. 14.

and its potential for racial discrimination, see, e.g., *Perkins* v. *Matthews,* 400 U.S. 379 (1971), have not gone unnoticed.

In *Allen* v. *State Board of Elections,* 393 U.S. 544 (1969) this Court held that a change from single-member to at-large districting was covered by § 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, because at-large districting might well "nullify [Negroes'] ability to elect the candidate of their choice just as would prohibiting some of them from voting." *Id.,* 569. Federal law forbids "the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race." *Id.,* 565.

This warning was echoed in *Perkins* v. *Matthews,* 400 U.S. 379 (1971) where the Court held that Canton, Mississippi's switch to at-large districting required federal approval, even though multi-member districting had been part of state law since 1962 and even though blacks made up a numerical majority of the town's population:

> [T]he right of suffrage can be denied by the debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise. *Reynolds* v. *Sims,* 377 U.S. 533, 555 (1964).

400 U.S. 388.

The Court also cited the following congressional testimony:

> The history of white domination in the South has been one of adaptiveness and the passage of the Voting Rights Act and the increased black registration that followed has resulted in new methods to maintain white control of the political process.

> For example, state legislatures and political party committees . . . have adopted laws or rules . . . which have had the purpose *or effect* of diluting the votes of new enfranchised Negro voters. These measures have taken the form of switching to at-large elections where Negro voting strength is concentrated in particular election districts, faciltating the consolidation of predominantly Negro and predominantly white counties. . . .

Hearings on Voting Rights Act Extension before Subcommittee No. 5 of the House Committee of the Judiciary, 91st Cong., 1st Sess., Ser. 3, p. 17 (1969) (remarks of Mr. Glickstein)

400 U.S. 389 (emphasis added).

Among other remarks cited was the following comment of Rep. McCulloch:

> A whole arsenal of racist weapons has been perfected. Boundary lines have been gerrymandered, elections have been switched to an at-large basis . . . and both physical and economic intimidation have been employed.

Id., 389-90 n. 8.

This Court has long recognized that a history of racial discrimination may transform a system or process neutral on its face into one whose effects are discriminatory. *Gaston County* v. *United States*, 395 U.S. 285 (1969); *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971). In light of this, the Court has concluded that "as a general matter" single-member districts are "preferable to multi-member districts" in judicially created apportionment plans. *Connor* v. *Johnson*, 402 U.S. 690, 692 (1971). Therefore, where multi-member districts appear amid a tradition of racial conflict and state enforced segregation, they are closely scrutinized

and are often held invalid. See, e.g., *Sims* v. *Baggett*, 247 F. Supp. 96 (M.D. Ala. 1965); *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971), *remanded and stay granted* 402 U.S. 690 (1971), *suppl. order entered*, 330 F. Supp. 521 (S.D. Miss. 1971), *vacated and remanded sub nom. Connor* v. *Williams*, 409 U.S. 549 (1972); *Bussie* v. *Governor of Louisiana*, 333 F. Supp. 452 (E.D. La. 1971), *aff'd as to invalidity of multi-member districts*, 457 F.2d 796 (5th Cir. 1971), *stay den.* — U.S. — (Oct. 6, 1971); *vacated and remanded on other grounds sub nom. Taylor* v. *McKeithen*, 407 U.S. 191 (1972); *Sims* v. *Amos*, 336 F. Supp. 924 (M.D. Ala. 1972); *aff'd sub nom. Baxley* v. *Sims*, — U.S. —, No. 72-12 (Oct. 24, 1972), *cf. City of Petersburg* v. *United States*, C.A. No. 509-72 (D.D.C. 1972).[16]

In *Sims* v. *Baggett*, the court found that the multi-member districting provided in the Alabama House plan could not be explained by geometry, geography or equality of population. Taking judicial notice of the long history of racial discrimination in Alabama and of the absence of non-whites in the legislature, the Court concluded that the at-large districts in question were racially discriminatory in purpose and effect and could not stand. In *Bussie* the District Court approved

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[16] "[I]n view of the opportunities afforded [by at large districting] to discriminate against Negro Voters," the Attorney General has often prohibited their use in many areas covered by the Voting Rights Act of 1965. Letter from Ass't. Att'y. Gen. J. Leonard to La. Att'y Gen. Jack Gremillion, September 10, 1969; see also letter of Ass't Att'y Gen. Norman to Mississippi Att'y Gen. A. F. Summer, May 21, 1969; letters from Ass't Att'y Gen. Norman to Georgia Att'y Gen. A. K. Bolton, March 3, 1972 and to La. Att'y Gen. J. Gremillion, August 20, 1971, and to South Carolina Att'y Gen. McLeod, March 6, 1972 [objecting to multi-member districts for the Georgia, Louisiana and South Carolina legislatures.]

the special master plan creating single-member districts throughout Louisiana despite the fact that the plan violated the state policy of preserving traditional boundaries. The court cited the past exclusion of blacks from the legislature as proof of dilution. It found that multi-member districts would perpetuate but single member districts would "minimize dilution of voter strength. . . ." The court remarked that:

> [n]either historical boundaries nor state policy nor state constitutional provisions may be used as vehicles by which to deprive the people of their constitutional right to equal protection under the law or of their right to equal participation in the election process.

333 F. Supp. 457-58.

The Court also emphasized that:

> [s]ingle member districts are always to be preferred if the use of multi-member districts tends to dilute the voting strength of any minority group.

Id., 458.

Similarly, the court in *Sims* v. *Amos, supra*, adopted single-member districting throughout the state of Alabama, not only on the grounds of population equality, but also because of

> the long history of racial discrimination evident in Alabama . . . in Alabama it is reasonable to conclude that multi-member districts tend to discriminate against the black population.

336 F. Supp. 936.

Forced to draw its own plan in *Connor* v. *Johnson, supra,* the District Court agreed with the plaintiffs

that large multi-member districts invidiously diluted the weight of black votes in Mississippi. The court felt, however, that there was not enough time before the next elections to draw single member districts. Nevertheless, this Court partially reversed the District Court for failing to divide Hinds County, which included Jackson, into single member districts.

In *City of Petersburg* v. *United States,* C.A. No. 509-72 (D.D.C. 1972) the District Court agreed with the Attorney General that the Virginia city's annexation plan, coupled with the use of at-large elections for local officers, had an invidiously discriminatory effect on the black population. Both the Attorney General and the court emphasized that the discriminatory effect of the annexation lay in the creation of an at-large system in the context of a change to a white majority population. See Mem. Op. 4, n. 2; 18. The three-judge court conceded that official segregation had abated in the state, that some blacks had been elected to city posts and that there was no evidence that the annexation was for the purpose of denying blacks the right to vote on racial grounds. Nevertheless, in the light of the history of racial discrimination in Virginia and in Petersburg, the city's attempt to restrict the political influence of blacks, the exclusion of blacks from political processes, the separate black/white political structures and widespread block voting (Mem. Op. at 9-12) the court felt that the plan diluted the weight of black voters, and had a "concomitant effect on their political influence which is a part of the bundle of individual rights embodied in the franchise as recognized as guaranteed by the Constitution. *Perkins* v. *Matthews,* 400 U.S. 379, 388 (1971) . . . ." (Mem. Op. at 17).

B. The Whitcomb Rule

The conditions that have led this Court and others to restrict the use of multi-member districts in the cases just discussed were notably absent in *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971). The difference was recognized in *Taylor* v. *McKeithen*, 407 U.S. 191 (1972), where the Court emphasized that a challenge to multi-member districting in Louisiana was not controlled by *Whitcomb*.

> The important difference . . . is that in *Whitcomb* it was conceded that the State's preference for multi-member districts was not rooted in racial discrimination, 403 U.S. at 149. Here, however, there has been no such concession and, indeed, the District Court found a long history of bias and franchise dilution in the State's traditional drawing of district lines.

407 U.S. 194 n. 3.

In vacating the Fifth Circuit's order, the Court implied that a state with a blatant history of racial discrimination may have an affirmative obligation to take measures to overcome the effects of past dilution of black votes. Likewise, the District Court in *Sims* v. *Amos*, 336 F. Supp. 924 (M.D. Ala. 1972), distinguished *Whitcomb* from the situation before it, noting that

> *Whitcomb* arose in Indiana, a state without the long history of racial discrimination evident in Alabama.

336 F. Supp. 936.

The record in *Whitcomb* showed the following: 1) Indiana had had a civil rights law since 1885 (and had enacted a new one in 1969); 2) the state had suffered no incidents of racial discrimination after 1926;

3) votes were cast along party lines rather than along racial lines; 4) blacks were influential in the processes of Marion County *and* in both parties. They actively assisted in slate making, and were vital in delivering needed votes.

In short, the record indicated that the Negro minority was able to form coalitions and to participate freely in the political life of Marion County. As the Court remarked, there was simply "no indication that this [black] segment of the population [was] being denied access to the political system," 403 U.S. 155, or that they "had less opportunity than did other Marion County residents to participate in the political process and to elect legislators of their choice." 403 U.S. 149.

Against this background, it was clear that if the voting power of Marion County blacks were cancelled out, it was by "political defeat at the polls," not by virtue of any invidious discrimination created or aggravated by multi-member districting. 403 U.S. 153. The disproportionately low numbers of legislators from the black "ghetto" area "emerge[d] more as a function of losing elections that of built-in bias against poor Negroes." *Ibid.*[17]

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[17] In attempting to prove that at-large districting diluted their votes, the plaintiffs showed: 1) that the blacks of Marion County—located in a ghetto area—had special interests in certain issues which were different from the interests of the non-ghetto residents; 2) that they had been underrepresented in the past ten years in the legislature; 3) that at-large districting facilitated the high degree of party control over nominations and over the voting of the delegation, thus making it more difficult for a minority group to exercise influence over a legislator. Noting that plaintiffs were in effect arguing for separate representation to reflect their special interests, the Court made it clear that no constitutional principal demanded that a certain portion of seats be "reserved for ghetto residents serving the interests of the ghetto majority." 403 U.S. 154.

The decision in *Whitcomb* rested on the fact that on the face of the record blacks in Marion County were essentially no different from any other political group. Like other minority interests, they frequently suffered defeat at the polls. Failure to win representation in the give-and-take of open competition and normal political activity could not be considered the result of invidious discrimination.

But not all minority groups are able to form alliances with other interest blocs or to join freely in the political process. If a segment of the population is "denied access to the political system," its opportunity for political interplay, and thus for exerting influence, disappears. In this situation, government officials find that they need not be politically accountable to the shut-out minority, whose votes become essentially meaningless. Such a situation is impermissible in a representative democracy and any device which perpetuates it is constitutionally suspect.

The Court indicated its awareness of these problems in *Whitcomb* by giving a narrow scope to its holding. The validity of multi-member districts containing politically unsuccessful minorities was conditoned on the absence of evdence that these minorities had any "less opportunity" to participate in the political process than did other groups. Th[illegible]e Court expressly left open an attack upon at-large voting schemes where minorities could show effective exclusion from the political system.

When minority groups—especially racial minorities—are isolated by the dominant white majority, they become effectively excluded from the political system. In the language of *Whitcomb*, they certainly have "less

opportunity . . . to participate in the political process and to elect legislators of their choice." 403 U.S. 149. In such a case an isolated minority has no influence at all.

The isolation of a racial minority can be shown in many ways. It can be shown by a history of racial discrimination, both public and private, which has resulted in enforced poverty, educational neglect and low voter participation. Evidence that candidates are picked without regard to minority interests, that voters split along racial lines or the racial appeals are employed further indicates a "fencing out" of racial minorities. When multi-member districts appear amid such a situation they aggravate the existing racial isolation by making it more difficult for minorities to make their voices heard. In such a context multi-member districts operate as yet another device by which whites perpetuate their power over non-white groups.[18] It is for this reason that multi-member dis-

[18] It is interesting to note that more southern states (including Texas) initially used a combination of single and multi-member districting for their lower houses than did states in other parts of the country. In fact, 70.5% of all such states were in the South. National Legislative Conference and the Council of State Governments, REAPPORTIONMENT IN THE STATES, 23, 25, 26 (June 1972). This is not to imply, of course, that multi-member districts *per se* have an invidious purpose or effect whenever they are used in southern states. However, that part of the country has seen particularly widespread use of legal and extralegal techniques specifically employed for the purpose of disenfranchising blacks. See V. O. Key, SOUTHERN POLITICS, (Vintage Ed. 1949); E. C. Ladd, NEGRO POLITICAL LEADERSHIP IN THE SOUTH, 18-20 (1969); D. Mathews and J. Prothro, NEGROES AND THE NEW SOUTHERN POLITICS, 13-17, 166 (1966). Because of their discriminatory potential (see pp. 28-33 *supra*) multi-member districts should be carefully scrutinized whenever they are used in an area with a tradition of racial disenfranchisement—wherever that area happens to be.

tricts have been found suspect in areas where the racial divisions in society are especially apparent. See generally p. 31 *supra* and cases cited.

C. The Conditions Presented Here

1. The State as a Whole

Texas is one of the many areas throughout the country which has had a virulent tradition of racial discrimination, extending into relatively recent times. As the District Court noted "[t]here exist innumerable instances, covering virtually the entire gamut of human relationships, in which the State has adopted and maintained an official policy of racial discrimination against the Negro." 343 F. Supp. 725; *see* cases cited *id.* nn. 15, 16.

Texas has also gone to great lengths to fence out blacks from the political and electoral process. *See*, e.g., *Nixon* v. *Herndon*, 273 U.S. 536 (1927) [white primary law held unconstitutional]; *Nixon* v. *Condon*, 286 U.S. 73 (1932) [white primary rule promulgated by Executive Committee of the State Democratic Party held unconstitutional]; *Grovey* v. *Townsend*, 295 U.S. 45 (1935) [white primary law adopted by state convention of Democratic party upheld]; *Smith* v. *Allright*, 321 U.S. 649 (1944) [exclusion of Negroes from the Texas Democratic primary held unconstitutional; *Grovey* overruled]; *United States* v. *Texas*, 252 F. Supp. 234 (W.D. Tex. 1966), *aff'd* 384 U.S. 155 [Texas poll tax held unconstitutional].

In Texas (and in Tennessee and Arkansas) the poll tax was recognized as "the principal formal barrier between the voter and the ballot box . . . ." V. O. Key, SOUTHERN POLITICS, *supra* 578. Adopted specifically

to discourage black voting, it posed a special problem for the black poor. *Id.*, 537 618,[19] *see* T. Dye, THE POLITICS OF EQUALITY, 18 (1971).

The white primary was considered to be an even "more important component of the system" to exclude blacks and more effective in restraining the Negro vote. Key, *supra* 555, 618; Dye, *supra* 18, Mathews and Prothro, *supra* 16. It, too, was adopted explicitly to disenfranchise the black population—supposedly, without offending the Constitution. Key *supra* 619, 621. In San Antonio, those Democrats apparently not benefiting from the black vote were among the staunchest advocates of white primary legislation. Key, *supra* 621.[20]

The State's segregationist and exclusionary policies toward blacks have also extended to the Mexican-American population.[21] See, e.g., *Hernandez* v. *Texas*, 347

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[19] By the time the poll tax went into effect in Texas, that state's disenfranchisement of the Negro was largely complete; "the Negro had [already] been persuaded to stay away from the polls." See Key, *supra* 533-35.

[20] Texas has traditionally been a one-party state. However, both Democrats and Republicans (such as exist) have been equally united in an anti-black position. See O. Douglas Weeks, *Texas, Land of Conservative Expansiveness*, THE CHANGING POLITICS OF THE SOUTH, 203, 205 (Ed. W. C. Havard, 1972). In Truman days, for example, the Texas Republican State Executive Committee adopted a resolution condemning the President's civil rights program. Key, *supra* 290.

[21] As the District Court emphasized "[b]ecause of long standing educational, social, legal, economic, political and other widespread and prevalent restrictions, customs, traditions, biases and prejudices, some of a so-called *de jure* and some of a so-called *de facto* character, the Mexican-American population of Texas, which amounts to about 20%, has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economies, health, politics and others. 343 F. Supp. 728.

U.S. 475, 478 (1954) [jury selection]; *Cisneros* v. *Corpus Christi Independent School District,* 324 F. Supp. 599 (S.D. Tex. 1970) [school segregation]; *Muniz* v. *Beto,* 434 F.2d 697 (5th Cir. 1970) [grand jury selection]. Mexican Americans are generally unassimilated into Texas life. Key, SOUTHERN POLITICS, *supra* 271. They have been traditionally subject to the "coercive influences usually brought to bear on depressed groups." *Id.,* 272.

Like blacks, Mexican Americans have been subject to "effective disfranchisement" in Texas. The barriers they face have been "similar in character if not in degree to that which discourages Negro voting in most of the South." *Id.,* 273. Their lack of political participation has not only been fostered by a "deficient educational system," as the District Court found 343 F. Supp. 731, but also by "the most restrictive voter registration procedures in the nation." *Ibid.*

Texas' past and current registration and election laws: the long residency requirement, *Beare* v. *Smith,* 321 F. Supp. 1100 (S.D. Tex. 1971), restrictions on assistance to illiterates, *Garza* v. *Smith,* 320 F. Supp. 131 (W.D. Tex. 1971), the numbered place system and the strict majority requirement for primaries have, in fact, limited and diluted the votes of both Mexican-American and black minorities. The place system and the majority rule are especially invidious. "[H]ighlight[ing] the racial element where it does exist" 343 F. Supp. 725, the numbered place system encourages minority isolation by ensuring that even if the majority is split, it can regroup and defeat the minority. Its potential for "curtailing minority voting power" is "clear." See *Dunston* v. *Scott,* 336 F.

Supp. 206, 213 n. 9 (E.D.N.C. 1972). The strict majority requirement, almost unknown outside the South, is also suspect. *Cf. Evers* v. *State Board of Elections Committee,* 327 F. Supp. 640 (S.D. Miss 1971).

As the District Court remarked:

> [W]hatever its constitutional status, it is clear that the majority system tends to strengthen the majority's ability to submerge a political or racial minority in a multi-member district.

343 F. Supp. 725.[23]

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[23] Any degree of discrimination built into an apportionment system voids that system. *Hadley* v. *Jr. College District,* 397 U.S. 50, 57 (1970); *Wells* v. *Rockefeller,* 394 U.S. 542, 546 (1969). When the majority and place systems are combined with a third system with discriminatory potential (such as multi-member districting) there is an inference of unconstitutionality. See *Jenness* v. *Fortson,* 403 U.S. 431, 437 (1971). In any event, it is beyond dispute that Texas has systematically excluded both blacks and Mexican Americans from its political life and has denied many of them access to the electoral system. This fact alone requires that the closest scrutiny be given to any at-large districting scheme in Texas which contains substantial racial minorities within its boundaries.

It should also be noted that suspect devices like the majority and place requirements were not present in Indiana and therefore not before the Court in *Whitcomb.* Nor did the Court confront a history of racial discrimination or evidence of irrationality in the plan. Both those elements appear in this case. As the court below pointed out, the Indiana apportionment plan, in contrast to the Texas scheme, treated all large metropolitan areas alike. 343 F. Supp. 722. In addition, proof that the expense of campaigning in large multi-member districts discriminates against poor candidates and their supporters was not presented in *Whitcomb,* but was presented here.

The presence of all these factors and their complete absence in *Whitcomb* are enough to distinguish the two cases on that basis alone.

2. Dallas and Bexar Counties

The District Court found that both Dallas and Bexar counties reflected the statewide pattern of racial discrimination and political isolation of minority groups.

Dallas. The record showed that not only was the black community poorly represented in the legislature, but that the black minority had been "effectively excluded from participation in the Democratic primary selection process." 343 F. Supp. 726 n. 17. The court below found that the white-dominated slating organization—the Dallas Committee for Responsible Government (DCRG)—never considered the interests of the black community in slating candidates, and slated blacks, if at all, on the basis of their race, not on the basis of their sympathy with black concerns. Furthermore the court found that black leaders participated only at the command of the DCRG—and only in recruiting candidates if the DCRG saw fit to slate a Negro. As the District Court remarked:

> Negroes in Dallas County are permitted to enter the political process in any meaningful manner only through the benevolence of the dominant white majority. If participation is to be labeled "effective" then it certainly must be a matter of right, and not a function of grace.

343 F. Supp. 727.

The record also showed continuing racial prejudice against blacks in Dallas County and the use of racial

appeals in political campaigns[23] as late as 1970. *Id.*, 726-27.

In short, the blacks of Dallas County have been denied a realistic opportunity to join in the political life of the area. Under these circumstances, multi-member districts are invidiously discriminatory. Accordingly, the District Court held them impermissible in Dallas.

Bexar. The evidence showed, and the District Court found, that Mexican Americans in Bexar County continued to suffer racial discrimination, both private and public. The court further found that Mexican Americans live in segregated communities in the most deprived areas of the city, and suffer from substandard housing, severe poverty, and high unemployment. 343 F. Supp. 729 n. 18a; 730.

Compounding these difficulties, the court found, is an extreme cultural and political isolation, due, in part, to a language disability and "fostered by a deficient educational system." The court concluded that this isolation explained the low level of political participation among Bexar County Chicanos—and among Mex-

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[23] Commentators have noted that this fixation with the "race question," common throughout the South, has tended to smother conflict over other issues and has stifled the development of a two party system. V. O. Key, SOUTHERN POLITICS, *supra* 142, 315-16; *See* Matthews and Prothro, *supra* 370-372. A desire to subordinate the Negro (and other racial minorities) has in fact determined the entire framework of Southern political life. V. O. Key, SOUTHERN POLITICS, *supra* 8-9, 665; Dye, *supra* 17-20; 107-08; see Matthews and Prothro, *supra* 13-18, 332; *passim*. In this respect, Bexar County reflects a pattern not unique to Texas alone.

ican Americans throughout Texas. The court summarized:

> This cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican-Americans access to the political process in Texas even longer than the Blacks were formally denied access by the white primary.

343 F. Supp. 731.

The court also found that voters divided along racial lines in elections contested by Chicano candidates, with Anglo-Americans tending to vote overwhelmingly against Mexican-American candidates. (The lack of a two-party system in Bexar County cuts off any opportunity to form a viable minority opposition. It also eliminates the competition for minority support, found so critical in *Whitcomb*.)

Lastly, the evidence demonstrated that the prohibitive cost of running in the county at large had "inhibited the recruitment and nomination or election of Mexican-American candidates for the Texas House of Representatives." *Ibid.* In short:

> [a]ll these factors confirm the fact that race is still an important issue in Bexar County and that because of it, Mexican Americans are frozen into permanent political minorities destined for constant defeat at the hands of the controlling political majorities.

Id., 732.

In light of the fact that Mexican Americans have been "denied access to the political processes through

years of discrimination," the court concluded that "the remedying of State action is both appropriate and constitutionally compelled." *Id.*, 733.

Thus, the court ordered single-member districts for Bexar County on the grounds that single-member districting would aid in remedying the effects of present and past discrimination. Multi-member districts, on the other hand, would simply perpetuate the isolation and political impotence of the Chicano community.

The court's decision conformed scrupulously to the *Whitcomb* standards. The fact that Mexican-American candidates have not always been rejected by the white population in Bexar County is irrelevant. Proof of total exclusion from the political system is unnecessary. The *Whitcomb* standards simply demand a showing that the minority group in question have "less opportunity for success." That was amply demonstrated—by the poverty, isolation, low voting rates, and effective exclusion of Mexican Americans from the political, social and economic life of the County.

The District Court agreed with this Court in *Whitcomb* that minorities are not automatically entitled to representation. But nothing in its holding implied to the contrary. The thrust of the court's opinion was simply that "a State may not design a system that deprives such groups of a reasonable chance to be successful." 343 F. Supp. 734. That reasoning is fully consistent with, and is indeed compelled by, the rationale of *Whitcomb*.

CONCLUSION

The Equal Protection clause does not permit states to create apportionment plans that inexplicably discriminate among voters or which result in dilution of the votes of minorities. The District Court's judgment should be affirmed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

NO. 72-147

BOB BULLOCK, ET AL,

Appellants,

v.

DIANA REGESTER, ET AL,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF FOR APPELLEES REGESTER, ET AL

BRIEF OF APPELLEES

This brief is tendered on behalf of the original plaintiffs, Diana Regester, et al, who initiated this action challenging the redistricting of the Texas House of Representatives on various grounds, including excess deviation, irrationality and the invidious effect of the multi-member districts upon racial and ethnic minorities. It is further submitted on behalf of the intervening Texas AFL-CIO, and various individual members thereof, including Elbert Turner, a Black resident of Dallas County; these intervenors challenge the redistricting plan on various grounds, including the dis-

criminatory impact of multi-member districts in Dallas and Bexar Counties on lower-income residents and racial and ethnic minorities. Finally, this brief is submitted on behalf of a group of intervenors, Dick Reed, and others who have been in the past and intend in the future to be candidates for the Legislature from Dallas County. These intervenors challenge the at-large districting scheme in Dallas on the ground that the campaign costs required to wage a legislative campaign in Dallas County effected a discrimination against lower and middle-income voters and candidates.

JURISDICTION

The heart of the trial court's action is a declaratory judgment that the reapportionment of the Texas House of Representatives violated the Fourteenth Amendment. The trial court did grant relatively narrow injunctive relief implementing new single-member legislative districts for Dallas and Bexar Counties. It remains our view that this Court lacks jurisdiction of this appeal. *Board of Regents v. New Left Education Project*, ____U.S.____, 92 S.Ct. 652 (1972). For a three-judge court is required only "where the challenged statute or regulation albeit created or authorized by a State Legislature, has State-wide application or effectuates a State-wide policy." Although the declaratory relief is of State-wide impact, it will not sustain jurisdiction under 28 U.S.C. §1253. *Mitchell v. Donovan*, 398 U.S. 427 (1970). The limited injunctive relief affects only Dallas and Bexar Counties and the legislative districts in these Counties did not reflect a State-wide policy and hence the injunctive relief will not sustain jurisdiction. *Moody v. Flowers*, 387 U.S. 97 (1967). Clearly the State cannot appeal from the

denial of broader injunctive relief for it is not thereby aggrevied. *Gunn v. University Committee to End the War*, 379 U.S. 383 (1970).

APPELLEES' COUNTER STATEMENT OF THE CASE

Appellants' statement of the case is inadequate and misleading. Contrary to the suggestion of Appellants, this case is not simply a "political struggle" maintained by certain "political groups" (Appellants' brief, p. 3).* More appropriately, this case represents simply one more effort on the part of citizens of Texas to harmonize the election machinery of the State with the notions of equal protection. The reported decisions testify to the enduring nature of the effort.[1]

THE HISTORY OF THE APPORTIONMENT BILL

When the Texas Legislature adjourned in May 1971,

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*This brief is being printed before the printing of the appendix. Record references throughout the brief are as follows:

(1) App. refers to the Appendix to the Jurisdictional Statement.

(2) Dep. refers to the depositions contained in the record, wherever used the reference will include the name of the deponent.

(3) Tr. refers to the transcript of trial testimony.

[1] *cf. Smith v. Allright*, 321 U.S. 649 (1944); *Carrington v. Rash*, 380 U.S. 89 (1965); *U.S. v. Texas*, 384 U.S. 155 (1966); *Bullock v. Carter*, ...U.S....., 92 S.Ct. 849 (1972). Texas responded to the elimination of the poll tax with an almost equally repressive registration system which was thereafter invalidated in *Beare v. Smith*, 321 F.Supp. 1100 (S.D.Tex. 1971); the State responded to the invalidation of the filing fee system in *Carter v. Dies*, 321 F.Supp. 1358 (N.D.Tex. 1970) with yet another unconstitutional scheme, *Johnston v. Luna*, 338 F.Supp. 355 (N.D.Tex. 1972) Indicative of the State's hostility to expansion of the franchise was the attempt to drastically limit the newly enfranchised 18-21 year old voters with a palpably unconstitutional residency law (Artice 5.08 (m) of the Texas Election Code), see *Owenby v. Dies*, 337 F.Supp. 38 (E.D.Tex. 1971).

it had failed to apportion the Senate but had adopted an apportionment plan for the Texas House of Representatives. The House plan was promptly challenged. On August 10, 1971 a state trial judge declared the plan unconstitutional and in early September, the Texas Supreme Court affirmed, *Smith v. Craddick*, 471 S.W.2d 375 (Tex.S.Ct. 1971). The Court found the plan violated the Texas Constitution in the unnecessary cutting of county lines and in failing to observe the requirement of the Texas Constitution "that a county receive the member or members to which that county's own population is entitled when the ideal district population is substantially equalled or is exceeded."[2]

In its opinion, the Court chastised the State for failing to offer any evidence in explanation of the plan, a shortcoming the State has repeated in the present case. The opinion established some apportionment guidelines. (1) Counties which had population in excess of that necessary for one or more representatives could have that excess joined "with contiguous area of another county to form a district."[3] 471 S.W.2d at 378. (2) "Multi-member districts within a single county"

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[2]The original House plan had ignored this requirement of the Texas Constitution, e.g., Grayson County was bifurcated although it had sufficient population to entitle it to one representative. Similarly, McLennan County had ample population to entitle it to two representatives and was inexplicably divided.

[3]The plan adopted by the Legislative Redistricting Board, which is here under attack, violated this instruction in four instances without explanation. Thus, without explanation, the counties of Smith, Hidalgo, Brazoria and Jefferson were subdivided so that the surplus population was allocated into separate districts rather than into a single district. (App. 16A).

were constitutional "in the absence of some discriminatory effect."[4] 471 S.W.2d at 377.

CONVENING OF THE LEGISLATIVE REDISTRICTING BOARD

The failure to apportion the Senate required the convening of the State's Legislative Redistricting Board (Art. III, Sec. 28, Texas Constitution). On August 24, 1971, the Board convened; it was composed of Lieutenant Governor Barnes, Attorney General Martin, Land Commissioner Armstrong, State Comptroller Calvert and Gus Mutscher, Speaker of the House of Representatives. By that time the House redistricting plan had been declared unconstitutional by the trial court, nevertheless the Redistricting Board limited its consideration to the Texas Senate. This refusal was reaffirmed on September 14, 1971, when the Board resolved that it had no jurisdiction to apportion the House of Representatives. Finally, the Texas Supreme Court was compelled to issue mandamus requiring the Board to undertake House apportionment, *Mauzy v. Legislative Redistricting Board*, 471 S.W.2d 570 (Tex. S.Ct. 1971). As a result, on September 30, 1971, with more than half of its 60 day life having expired, the Board held its first hearing on House reapportionment, and for the first time began to consider division of the State into representative districts. (Minutes Legislative Redistricting Board, September 30, 1971).

THE FUNCTIONING OF THE LEGISLATIVE REDISTRICTING BOARD

The trial court found that the Legislative Redistrict-

[4]In drafting the present plan the Legislative Redistricting Board apparently ignored this cautionary language. (Calvert Dep. 58); (Johnson Dep. 28).

ing Board acted without any "rational direction" (App. 20A) in redistricting the Texas House. As an initial anomaly, the Board chose to treat the apportionment plan that had been adopted by the Legislature as a complete "nullity" (Martin Dep. 22-4), choosing to begin from "scratch" (Spellings Dep. 25). The Board held two public hearings in connection with House districting and then disregarded the testimony that it heard.[5] As member Armstrong put it, the Board was afflicted with an "apparent inability to all get together and do something in concert." (Armstrong Dep. 17). The result was that a staff, largely uninstructed, produced the plan that was ultimately adopted. The principal staff functionaries were Robert Johnson, Executive Director of the Texas Legislative Council and Secretary of the Legislative Redistricting Board, and Robert Spellings, of the Lieutenant Governor's staff.[6] According to Johnson, he received no instructions from the Board regarding whether to use multi-member or single member districts in the urban counties (Johnson Dep. 17-18) and was not instructed to consider the impact of the districting scheme upon racial minorities (Johnson Dep. 28) and as a result was simply not concerned with the effect of the plan on racial or ethnic minorities. (Johnson Dep. 35). The

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[5]Member Calvert of the Board deemed the testimony before the Board to be "all this crap." (Calvert Dep. 66). Martin and Barnes, confronted with testimony before the Board that over 60% of the citizens of Dallas County desired individual member districts (App. 31A), sought to justify their support for at-large districts for Dallas County as being in response to the public demand. (Martin Dep. 31); (Barnes Dep. 91, 126).

[6]Member Calvert had no staff working on reapportionment and depended upon Attorney General Martin and Johnson of the Legislative Council. (Calvert Dep. 9-10). According to Martin, the plan was prepared by the staffs of Barnes, Martin and the Legislative Council. (Martin Dep. 33).

final plan was drawn by Spellings, relying on information from Johnson and the Legislative Council. (Spellings Dep. 29-31). Spellings had not attended the public hearings of the Board (Spellings Dep. 36). Spellings drew the House plan beginning on a Tuesday afternoon about 5:00 and finishing about 2:00 in the morning on Wednesday.[7] (Spellings Dep. 26). During this short interval, Mr. Spellings redistricted the entire State of Texas; as he states it, starting "from scratch with a blank map." (Spellings Dep. 25).[8] According to Spellings, the only two Board members with whom he discussed the issue of single member versus multi-member districts, were Lieutenant Governor Barnes and Commissioner Armstrong, both of whom were committed to individual member districts. (Spellings Dep. 46). He never ascertained the attitude of the other Board members before constructing the plan that was ultimately adopted, a plan which left multi-member districts in every urban county other than Harris.

THE RESOLUTION OF THE SINGLE MEMBER V. MULTI-MEMBER QUESTION

The fundamental issue confronting the Board concerned the treatment of the metropolitan areas.[9] Each of the 24 witnesses who testified at the Board's two hearings was concerned solely with the issue of whether the State's urban counties should be divided into

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[7]This was the Wednesday immediately preceding approval of the plan by the Board on Friday, October 22, 1971. (App. 132C).

[8]Spellings had gained his initial experience with redistricting during the last twenty-four hours of the regular session of the Legislature. (Spellings Dep. 114).

[9]Mutscher refers to "debates raging with respect to metropolitan areas." (Mutscher Dep. 43).

single member districts. (Hearings of Redistricting Board, September 30, 1971 and October 1, 1971.)[10] During the course of the hearings, the Board's attention was specifically directed to the State's claim in the *Kilgarlin*[11] case that Texas had a policy of dividing a county once it became entitled to 15 or more legislators. Yet the Board, without ever formally facing the issue (Armstrong Dep. 12) allocated Dallas County 18 legislators to be elected at large and created 23 single-member districts in Harris County.

The Board's two prime movers were Lieutenant Governor Barnes and Attorney-General Martin, having the only staff working on the plan (Martin Dep. 33). Neither of them took time to resolve the issue of individual districts for Dallas County, and the other urban areas. Two members of the Board were publicly committed to single-member districts, Barnes (Barnes Dep. 111) and Armstrong (Armstrong Dep. 23). Attorney General Martin, who was Chairman of the Board, testified that he had no fixed opinion on the single-member district question and simply adopted the staff recommendation:

Q I understand that. Well, you say you do recall discussions, I take it, with other Board members on the question of dividing Dallas County; is that right?

A That is correct.

Q Did you take a position one way or the other

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[10]Fifteen of the witnesses were from Dallas County.

[11]*Kilgarlin v. Martin*, 252 F.Supp. 404, 444 (S.D.Tex. 1964). Barnes claimed to have never heard of the policy, despite the fact he was a defendant in *Kilgarlin*. (Barnes Dep. 135-6). Martin testified that he followed *Kilgarlin* (Martin Dep. 65), yet never alluded to the 1,000,000 population limitation described in *Kilgarlin*.

on whether Dallas County should be divided into—

A Not until the map was presented to us by the staff. At that time, well, that was the way Dallas County was drawn.

Q And so you just accepted the proposal of your staff; is that correct?

A I made the statement that I would sign a bill either way.

(Martin Dep. 30).

Martin was equally explicit that he gave no instructions to the staff concerning the treatment of Dallas County (Martin Dep. 39, 42). Robert Johnson, the Director of the Legislative Council and Secretary of the Board confirms:

Q . . . Did the Board at any time give you any guide as to whether you should strive for multi-member districts in the major counties, or for single-member districts?

A No sir, they never did give us any instructions on that.

Q The Board didn't instruct you on that point?

A No, sir.

Q Don't you consider that should have been a primary policy decision that should have gone into the formation of the Redistricting Plan?

A That was a policy decision for them to make, yes.

(Johnson Dep. 17).

It was Spellings, a staff member of Lieutenant Governor Barnes, that drew the plan leaving Dallas County with 18 Legislators to be elected at-large. According to him he was so instructed by Barnes (Spellings Dep.

10). Barnes explains his decision to leave Dallas and the other metropolitan areas as multi-member districts on the following basis:

> Q And how did it come about, that decision?
>
> A It came about by just an assumption that if we had a public hearing and a vote, that the vote would probably be three to two against it.

(Barnes Dep. 98).

As a consequence of this unfounded assumption[12] the single-member question was never confronted. The "raging" issue of single-member districts in the metropolitan areas simply vanished into a void of inaction. Barnes assumed that Martin opposed individual districts; Martin, having no opinion, assumed that the staff had recommended at-large representation (Martin Dep. 30), and the staff being of the view that this was a policy decision for the Board (Johnson Dep. 17), took no position on the issue.

Disappearing into the same void was the "state policy" that "limits the size of any multi-member district to fifteen representatives and that any county that attained a million or more residents in the future would be subdivided for representative districts." (App. 20-1A).[13]

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[12]Barnes' assumption was that Martin opposed single member districts. (Barnes Dep. 98-9). Yet, Martin testified he had no fixed views and would have approved a plan "either way". (Martin Dep. 30).

[13]This policy was articulated by the state in *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1964). Among the defendants therein were: Crawford Martin as Secretary of State, Ben Barnes as Speaker of the House and Comptroller Robert S. Calvert. (See defendants' trial brief in *Kilgarlin v. Martin*, No. 63-H-390, Southern District of Texas, Houston Division.)

THE PLAN ADOPTED BY THE BOARD

The Legislative Reapportionment Plan[14] adopted by the Board reflects the whimsical method by which it was promulgated.

The State's two most populous counties are Harris and Dallas. Harris County was divided into 23 individual member districts. Dallas County was allocated 18 Legislators to run at-large. In four instances involving counties that had sufficient population to entitle them to more than one representative, the plan violates the State Constitution by allocating the surplus population to two districts rather than to a single district.[15]

The apportionment plan, rather than preserving the integrity of county lines, mutilated county lines without rhyme or reason. The most egregious example is that of Bexar County, where a portion of the north-

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[14]The State's brief asserts that the record is conclusive; "that the Board used the lowest population plan available to them." (fn. 3). This assertion is mind-boggling when one considers that the Board was presented but a single plan and that one was prepared by an admitted novice (Spellings Dep. 114), operating without significant guidelines, who drew the plan in a nine hour period during the late evening and night of October 19, 1971. (Spellings Dep. 9-10). True, the Board adopted the only plan available to them, for it was the only plan presented to them. This is, however, a far cry from the assertion that it was the best possible plan. The Board assured itself that it would not view a competing plan by rejecting Speaker Mutscher's request that it delay adoption of the plan until the following day so that he could present a new plan for consideration (Mutscher Dep. 11). Further, the Board ignored the plan presented to them by the State Republican Party with "extremely low" population differential. (Tr. 827-8).

[15]The affected counties are Smith, Hidalgo, Jefferson and Brazoria. As found by the trial court, the State "ventured no explanation whatsoever, even of the necessity for these depredations against the State policy." (App. 16A).

west part of the county was removed and joined with a rural legislative district (District 45). The net effect of this cutting of Bexar County was to increase rather than reduce deviation, for 3,762 persons were added to District 45, making it over populated by 3,445 persons, resulting in a deviation of 4.6%. The removal of this population from the county had no appreciable impact upon Bexar County's deviation figures. (See App. 135C, 154C).

Similarly, the treatment of Hidalgo and Jefferson Counties reflect that the plan had little concern for the integrity of political units. Jefferson County, with a population of 244,773, was divided into three separate districts. A three member district, District 7, was composed of most of the City of Beaumont, some rural area, and portions of other Jefferson County cities. (App. 144C). 20,326 voters, including residential portions of the City of Beaumont, were attached to District 5, composed of two rural counties, Hardin and Jasper. (App. 119C). Finally, a portion of Port Neches, consisting of 3,133 persons, was severed and attached to District 8 (App. 120C). Hidalgo County reflects another instance in which county and city lines were obliterated in a fashion which cannot be explained by efforts to minimize deviation. In that county, a two member at-large district was created (App. 143C). A portion of the county, consisting of 26,840 residents was severed and attached to District 49, consisting of the Counties of Kennedy, Kleberg and Willacy. Yet another portion of the county, consisting of 9,700 residents, was severed and attached to District 51, which results in a district composed of portions of Hidalgo and Cameron Counties. (App. 137C). The effect of this truncating of Hidalgo County was to divide the City of Mercedes, a city of some 18,000 per-

sons, into three separate legislative districts. (App. 143C). On the surface this combination of districting strategies does not supply its own credibility and the State made no attempt to explain why such peculiarities were required or even desired.

The State's brief suggests that the deviations contained in the apportionment plan are fully explained by the interest of the State in preserving the integrity of small rural counties. The fact is that the more substantial deviations appear in the areas in which counties have already been subdivided. Of the under-populated districts, the five that have the largest deviation are Districts 4, 78, 85, 92 and 62. (App. 153C-165C). Three of these are individual member districts in Harris County, which co-exist side by side with Harris County districts that are over-populated. (App. 127-8C, 132C). District 62 was created by carving a portion of Taylor County into an individual member district, composed of part of the City of Abilene. (App. 151C). Only one of the deviations could be attributed to a desire to preserve the integrity of county lines; that is District 4, composed of 3 relatively rural counties. (App. 119C).

THE EVIDENCE AND FINDINGS BELOW

The trial court, in keeping with Rule 52 F.R.C.P., included within its detailed opinion, findings of fact and conclusions of law. These findings are amply supported by the record; and much of Appellants' briefing efforts seek a redetermination of factual issues resolved by the trial court.

THE STATE-WIDE PLAN

The trial court found that deviation contained in the reapportionment plan was "not the result of a good

faith attempt to achieve population equality as nearly as practicable."[16]

The Court finds that "the policy of preserving the integrity of county lines has been blatantly violated by the slicing of Smith and Hidalgo counties without any justification." (App. 16A). A superficial inspection of the plan sustains this conclusion, yet the State made no attempt to show that these intrusions were either desirable or necessary.

In the disparate treatment of the metropolitan areas of the State, the Court found no rational or consistent State policy that would explain the deviations in the plan or provide any justification for the "haphazard combination of single and multi-member districts." (App. 22A). Noting that the State of Texas had "assured" the federal courts in *Kilgarlin v. Martin* that there was a state policy which limited the size of any multi-member district to 15 Legislators and that any county with a million population would be subdivided into legislative districts, the Court found that the creation of an at-large district in Dallas County violated this announced policy and that the State had come forward with no explanation for this sudden departure.[17]

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[16]Under the State's figures the plan contained a population deviation of 9.9%. The purported justifiication for the population deviation was the preservation of county lines, yet an analysis of the plan destroys the validity of the State's defense, e.g., the county line of Bexar County was violated for no apparent purpose, without explanation, and created a deviation substantially greater than would have existed had the county line been left intact. The method by which the plan was drawn reflects expediency rather than a good faith attempt at population equality.

[17]See *Kilgarlin v. Martin*, 252 F. Supp. 404, 444 (S.D.Tex. 1964). This announced State policy was called to the attention

Although the Court did not rest its decision upon the findings of disparate treatment between metropolitan areas of the State, it found that the differing treatment between Dallas and Harris Counties resulted in "radically unequal expense problems" for candidates who wish to run for office in areas with similar geographic characteristics. These radical differences between Harris and Dallas Counties in the cost of making a legislative race create an irrational classification on the basis of wealth, resulting in "substantive inequality on the basis of wealth in the protection afforded by the State's electoral laws to the rights of political association and voting." (App. 30A).[18]

The Court concluded its comparison of the treatment of Dallas and Harris Counties with the finding that "Texas has not established a compelling State interest nor even a rational relationship that justifies its disparate and unequal treatment of Harris County and every other metropolitan area of Texas." (App. 35A).

THE IMPACT OF THE MULTI-MEMBER DISTRICTING SCHEME UPON THE MINORITIES IN DALLAS AND BEXAR COUNTIES

We understand that counsel representing the Bexar County intervenors intend to devote substantial atten-

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of the Legislative Redistricting Board during the course of its hearings, and three of the members of the Board had been defendants in *Kilgarlin*. Despite the fact that Dallas has a population of 1,300,000 and was allocated 18 legislative representatives, the plan adopted by the Board allocated all the seats in Dallas County at-large.

[18]The Court found that a House of Representatives race in Dallas County would cost as much as $87,000. (App. 28A fn. 10). In 1970 the Republican Party of Dallas abandoned efforts to run a slate of legislative candidates because of the enormous expense involved in attempting to communicate with prospective voters in a County of 1,300,000. (Tr. 826-7).

tion to the record as relates to the plight of the Mexican-Americans of Bexar County; our discussion is limited to the impact of the at-large scheme upon the Negro minority of Dallas County. There are substantial similarities between the two counties.

Because of this Court's decision in *Whitcomb v. Chavis*, 403 U.S. 124 (1971), the trial court felt compelled to preliminarily compare the states of Indiana and Texas, noting the substantial differences in the mechanics of the political system of the two states,[19] and that Texas, unlike Indiana, has a colorful history of racial discrimination. (App. 36-7A).[20]

The virtually absolute exclusion of the Negro from the political process in Texas was not breached until 1966, when the first Negroes of the 20th Century were elected to serve in the Texas Legislature.[21] From 1900 to 1966 no Negro citizen of the State of Texas "was a nominee of the Democratic or Republican Party for any elective office in the State of Texas." (Pre-trial

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[19]Texas, as other southern states, remains essentially a one-party state, and despite the fact that the Republican Party conducts a primary, the participation is minimal. In Dallas County in 1970 there were 130,000 votes in the Democratic primary contrasted with 18,000 in the Republican. (Pl. Ex. 91-2). Texas also has that institution peculiar to the southern states, the run-off primary requiring an absolute majority for nomination. See Key, *Southern Politics in State and Nation*, Chap. 19, Sect. 3 (Vintage Books, 1949).

[20]By 1956 the Indiana Legislature had enacted statutes prohibiting discrimination against Negroes in such matters as public accommodations, employment and housing. (Ind. Ann. Stat. § 10-901, § 40-2307 and § 48-8501). This can be contrasted with the Texas Legislature under the leadership of the Dallas Legislative Delegation which was busy in 1957 enacting new racial segregation statutes. See Plaintiffs' Exhibit 87, "Dallas Lawmakers Record Heavy Segregation Vote."

[21]One of whom was from Dallas, Joe Lockridge. Lockridge, a virtual unknown in the Negro community, was selected by the downtown white structure as a candidate. (Tr. 709, 277).

order). The trial court concluded that this historical exclusion has not been meaningfully altered for the Negroes of Dallas, finding, "the Black community[22] has been effectively excluded from participation in the Democratic Primary selection process." (App. 40A).

THE POLITICAL CONTEXT OF DALLAS COUNTY

The trial court found that "hostility toward the Black community is still an integral part of Dallas County politics." (App. 41A, Tr. 349). While some areas of Texas may not have been wed to the system of racial discrimination, Dallas was clearly a bulwark of segregation[23] and "the legacy . . . of slavery, racism,

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[22]The 1970 census reflects a Dallas County population of 1,327,321, of which 220,616 are Negro, 90% of this Negro population is concentrated in a defined geographic area. (Tr. 200-1, Pl.Ex. 1). This black ghetto is characterized by poverty (Pl. Ex. 68), inadequate housing (Pl. Ex. 20, 36), inferior public services of transportation, lighting and streets (Tr. 336) and suffers the entire range of disabilities typical of urban black ghettoes. (See Crossroads Community Study for Dallas, May 1970, Pl. Ex. 31). Indeed, housing segregation in Dallas has become more severe since 1960. (Tr. 202).

[23]During the legislative battles of the late '50s over racial segregation, there was substantial opposition across the State to the enactment of new segregation statutes. This opposition was not to be found, however, among the Dallas legislators, who were in the vanguard of the segregationist leadership. (See Dallas News, May 1, 1958, "Dallas Lawmakers Record Heavy Segregation Vote," Pl. Ex. 87, Pl. Ex. 77, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47). As recently as 1958, it was still conventional political tactics in Dallas to urge defeat of a candidate because the candidate had the support of the NAACP. (See the Dallas News lead editorial urging defeat of Ralph Yarborough because he has the "support of NAACP rank and file." Pl. Ex. 82). Dallas County responded to school desegregation with reluctance befitting of its southern orientation; by 1964 Dallas County had been so successful in resisting school desegregation that only the first four grades in the public school system had been desegregated. (U.S. Commission on Civil Rights Public Education—1964 Staff Report, 220). Vestiges of the system of segregation continue to disappear slowly. (Tr. 345-6, 701, Pl. Ex. 69, 75).

of prejudice, . . . declines very slowly." (Tr. 290).

In the actual workings of Dallas County legislative politics, an organization known as the D.C.R.G. dominates the selection of Dallas County Legislators. In the words of the Court, "it is extremely difficult to secure either a representative seat . . . or the Democratic Primary nomination without the [D.C.R.G.] endorsement" (App. 40A).

The organization, although private, is composed principally of Democratic Party officials (Tr. 384-5, Pl. Ex. 53). The D.C.R.G. focuses its efforts in the white precincts of Dallas,[24] relying in large measure on distribution of slate cards designating the D.C.R.G. favorites[25]. (See Bock Dep., Ex. 16).

The trial court found that D.C.R.G., in formulating its legislative slate, "never" took into consideration "the interests of the Black ghetto." (App. 41A). Councilman Allen, a Negro member of the Dallas City Council, succinctly stated the participation of the

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[24]The State's witness, Kirk, a Dallas County Negro, was tendered as one intimately acquainted with Dallas County politics. He characterized the D.C.R.G. as "predominantly a white organization" and was unable to name any Blacks who "participate in the organization." (Kirk Dep. 30). Thus, the organization's political mailings are apparently not mailed in the Negro precincts (see Bock Dep. 58-9 and attached exhibits 4 & 5, Tr. 236, 352), warning as they do of "block voting" in the Negro areas of Dallas.

[25]The ability of this organization to dominate the legislative races is attributable to the enormous size of the legislative district, the complexity of the ballot (Tr. 342, see Ex. 16, Bock Dep.), the high costs of campaign (Tr. 232, App. 28A), all of which have resulted in a lessening of competition for the legislative races because of independent candidates' inability to compete with the D.C.R.G. slate. (Tr. 221, 340, 352). Indeed, the Republican Party, confronted with the overwhelming costs of attempting to wage a legislative campaign in Dallas County, abandoned its efforts in 1970 to wage a full-scale battle for legislative seats. (Tr. 827).

Black community in the candidate selection process of the D.C.R.G. in these words:

A In the selection process I would say none.

Q By that I mean the creation of their slate.

A I would say none.
(Tr. 687).

The inability of the Black community to have any effective participation in the Democratic Primary selection process[26] has resulted, as found by the trial court, in a "recurring poor performance on the part of the Dallas County delegation concerning the representation of Black interests in the Texas House of Representatives." (App. 41A). The record reflects,[27] as found by the trial court, that the D.C.R.G. as recently as 1970 was relying upon "racial campaign tactics in white precincts to defeat candidates who had the overwhelming support of the Black community" (App. 42A). Logically enough, the trial court concluded "that candidates elected on such a platform" could not "seriously represent the best interests of Dallas' Black community." (App. 42A).

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[26]This non-participation of the Negro community in the dominant Democratic Party coalition is partly explained historically, for as Dr. McCleskey testified, "The rules of the game—the political game in this State—were fixed and crystallized pretty much in the first half of the twentieth century when Blacks were effectively and almost entirely excluded from the political process." (Tr. 290).

[27]In the Democratic Primary run-off of 1970, the D.C.R.G. extensively mailed white precincts (Tr. 221, Bock Dep. 58-9) campaign literature directed against a white candidate, Stehr, urging his defeat in part because he had been engaged in bi-racial voter registration activities. (See Bock Dep., Exs. 4 & 5, Pl. Ex. 54 & 55). Although Stehr got 87.6% of the vote in the Negro ghetto, he was soundly defeated by the D.C.R.G. efforts in the white precincts. (Pl. Ex. 5).

SUMMARY OF ARGUMENT

The first section of argument is devoted to the defense of the trial court's conclusion that the "State of Texas simply had no rational State policy in the apportionment plan that resulted in the population deviations . . . and in the disparate treatments of metropolitan areas." (App. 19A). The Texas plan does not ring true. The State claims that deviation is attributable to a policy of preserving county lines. Yet some county lines are cut without explanation and meaningful deviations emerge that cannot be attributed to a desire to preserve political boundaries. Further, for no reason, the plan treats the State's metropolitan areas in radically different fashion, e.g., Harris County was assigned 23 Legislators in single-member districts; Dallas County was assigned 18 Legislators to run county-wide. This feature of the plan is in direct contradiction of representations made by Texas during the course of *Kilgarlin v. Martin*. There the federal courts were assured that the State had a policy of subdividing a county once it had become entitled to 15 legislators. Under all the circumstances the trial court properly found the plan not to be the "result of a good faith" apportionment effort. (App. 13A, fn.5).

With respect to the multi-member vs. single-member issue, two arguments are made.

Under the rationale of *Bullock v. Carter*, ... U.S. ....., 92 S.Ct. 849 (1972), the State's apportionment scheme for the major metropolitan areas such as Dallas and Bexar results in a discrimination on the basis of wealth and a denial of equal protection. The record is conclusive that the costs of a legislative race in Dallas County have become prohibitive, seriously limiting the capacity of candidates to wage contests in either the primaries or general election. The result is

a diminishing competition for legislative seats, and a delimiting of candidates solely on the basis of wealth. The decision to have Dallas County Legislators elected at-large and Harris County Legislators elected in single-member districts reflects no State policy whatsoever. Simply a "political choice" is constitutionally inadequate to justify the severe limitations imposed by the county-wide district upon the right to vote and to associate politically.

The county-wide legislative Dallas County carries with it an inherent bias against the Black citizens of that County, and results in a denial of fair representation in the Legislature. The historical exclusion of Texas Negroes from the political processes of the State is perpetuated by the at-large representation scheme. The private coalition which dominates legislative selection in Dallas was formed at a time when Negroes were non-participants and the coalition continues to determine the Democratic nominees for the Legislature, and the ultimate outcome of the election, without the participation of the Black community. The continued presence of racial hostility as a factor in Dallas County politics, and the prohibitive costs of campaigning county-wide, preclude Black citizens and their political allies from mounting effective county-wide legislative races. The result is that poor Blacks in Dallas are excluded from the legislative selection process and are victimized by recurring poor performance by the legislative delegation from Dallas County.

ARGUMENT

THE APPORTIONMENT PLAN COMBINES UNEXPLAINED DEVIATIONS AND AN IRRATIONAL SCHEME RESULTING IN A DENIAL OF EQUAL PROTECTION OF THE LAWS.

The State's argument is fairly simple. Under its theory, the apportionment plan contains only 10% deviation from the population ideal. This is a *de minimus* deviation which frees the State from having to offer any explanation of the deviations that the plan does contain, and further shields the State from any inquiry into the underlying rationale of the plan. This argument is essential to the State, for the apportionment plan is riddled with incongruities and will not withstand even a superficial examination. The State cannot prevail if the trial court was within its rights in looking to "the particular circumstances of the case" *Reynolds v. Sims*, 377 U.S. 553, 578, (1964); *Swann v. Adams*, 385 U.S. 440, 445, (1967).

This is not a case, as argued by the State, in which the trial court has become enslaved by numbers. Rather, the trial court looking to the facts and circumstances concluded: "The State of Texas simply had no rational State policy in the apportionment plan that resulted in the population deviations previously discussed and in the disparate treatment of metropolitan areas." (App. 19A). The State contends that the plan's population deviations are explained by a State policy which seeks to preserve the integrity of county boundaries. And yet, the Texas plan contains significant unexplained deviations that are unrelated to the preservation of county lines. For example, District 45 composed of six counties, if left alone, would have contained virtually the ideal population. For no reason, four census tracts were removed from Bexar County, violating the county integrity of Bexar County, and joined to the six rural counties to constitute District 45. The addition of Bexar County resulted in a population excess of 4.6% over the ideal district. The removal of the population from Bexar County did not appre-

ciably effect the deviation contained in that District's at-large representation scheme.[22] (App. 18A, 135C, 154C).

Three of the most under-populated districts contained in the reapportionment plan are Districts 78, 85 and 92. Each of these are individual member districts composed of various census tracts within Harris County. (App. 127C, 154C). Inasmuch as there were Harris County Districts that were overpopulated, the trial court concluded that these deviations were "insupportable." (App. 18A).

It was the State's view throughout that it had no obligation to explain these discrepancies, which are patently not attributable to a desire to maintain county lines, and hence we still have no inkling of how these peculiarities occurred.

The State districting scheme embodies not only deviations that belie the announced State policy of preserving county lines, but also embodies flagrant disparities in the treatment of the metropolitan areas. Harris County is divided into twenty-three single member districts. Dallas County is allocated eighteen members to run at-large. This discrepancy is not only unexplained but may well be the result of a misunderstanding among the members of the Redistricting Board and their staff.[23] We must assume that county integrity is an important ingredient in the life blood

[22]The State calculates the deviation of Bexar County by allocating the population excess equally to the 11 at-large districts. (App. 154C). Retention in the Bexar County District of the 3,762 persons in the four census tracts in question would have had no appreciable impact upon the Bexar County deviation, for it would have resulted in an average excess of 851 persons per district, slightly more than 1% per district, as contrasted with the 4.6% deviation created in District 45 by the addition of these Bexar County residents. (See App. 134C and 154C).

[23]See discussion, Statement of the Case, at page 10.

of Texas politics, since maintenance of county lines is the proffered justification for the plan's numerical deviation. Under the State's contention, it is presumably of value to a county to have a legislator or a cluster of legislators, whose district is co-extensive with the boundaries of the county. What then justifies this "built in bias tending to favor particular . . . geographical areas"?[30] Somewhat similar questions were raised in the course of *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1964), because at that time Harris County had its legislative seats allocated along congressional district lines. The State had a ready explanation. Texas had adopted a cut-off point to determine when a multi-member district simply became too large and unwieldy. That cut-off point was 15 Legislators and/or a population of one million, 252 F.Supp. at 444. As a consequence of this policy, Harris County was subdivided in 1965. Texas explained to the Court that in the future if other metropolitan areas reach this cut-off, such counties would themselves be subdivided. Dallas County with 1,300,000 persons[31] in 1970 was allocated 18 Legislators to run at-large. Three members of the Legislative Redistricting Board, each of whom signed the plan under attack, were defendents in *Kilgarlin*.[32] Yet not one of these Board members uttered a word of explanation for the untimely disappearance of this State policy. Little wonder that the trial court concluded that the plan was not the "result of a good faith attempt" at reappor-

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[30]*Abate v. Mundt*, 403 U.S. 182, 187 (1971), that is, if it is important, why place Harris County at a disadvantage vis-a-vis the State's other metropolitan areas?

[31]This population is greater than that of Harris County in 1965.

[32]Ben Barnes, then Speaker of the House of Representatives, Crawford Martin, then Secretary of State, and Robert Calvert, the Comptroller of Public Accounts.

tionment. (App. 13A). The apportionment is not "free from any taint or arbitrariness or discrimination." *Roman v. Sincock*, 377 U.S. 695, 710 (1964). Further, Texas has failed to offer "acceptable reasons for the variations among the populations of the various legislative districts." *Swann v. Adams*, 385 U.S. 440, 443 (1967). Under all circumstances, the denial of equal protection is manifest.

THE RADICALLY DIFFERING TREATMENT OF THE STATE'S METROPOLITAN AREAS RESULTS IN A DENIAL OF EQUAL PROTECTION

The State's two major metropolitan counties are Harris and Dallas.[23] Harris was allocated 23 Legislators to be elected from single-member districts. Dallas County was awarded 18 Legislators to run at-large.

No explanation has been offered for the differing treatment of the metropolitan areas.[24] The trial court found that the State had not "even" come forward with a "rational relationship to justify its disparate treatment of Harris County and every other metro-

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[23]Harris had a 1970 population of 1,741,912; Dallas 1,327,321. U.S. Department of Commerce, 1970 Census of Population. The State's other major metropolitan counties are Bexar and Tarrant; they have populations of 830,460 and 716,317 respectively. Both of these counties were allocated at-large representation but portions of both counties were severed, and the severed portions attached to rural representative districts. (App. 135C, 150C).

[24]The State's jurisdictional statement ventured the suggestion that: "In Dallas County the majority Democratic Party has wanted to gamble on winner take all races." (p. 22). Presumably the risks were too great in Harris County. The State's brief does not urge this explanation. In discovery the State was asked to provide the "practical or theoretical justification" for use of multi-member districts. The only explanation was that it was simply a "political choice" by the Board. (Pre-trial, Dec. 31, 1971, 65A-68A).

politan area in Texas." (App. 35A).

The differing treatment of these urban counties has dramatic consequence for the democratic process. In Dallas County a legislative candidate through the primaries and general election must address his message to 500,000 voters. (P.Ex.8). This legislative district is larger than 15 States of the Union. (App. 38A, fn.14). The result is fairly predictable. Costs of election are astronomical.* The isolation of the legislative candidate from the electorate assures virtual anonymity, e.g. in a 1969 appearance before a legislative committee, the Democratic County Chairman of Dallas County was unable to name the 15 Democratic Legislators from Dallas County. (Tr. 293). Finally, the excessive number of legislative races contributes significantly to a lengthy and complicated ballot, with 68 races on the general election ballot of 1970. (Tr. 342, Pl. Ex. 25).

The trial court found an "unjustified differentiation between Harris County and every other metropolitan area with regard to the expense of running office and of communicating with an electorate." (App.35A). The inescapable result is a "classifying of candidates and their abilities to run and to form political associations according to wealth, affecting basically and un-

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*The Court found $87,000 to be a reasonable cost estimate for a Dallas County legislative race by candidates attempting to run independent of the D.C.R.G. slate. (App. 28A). But even with the cost savings available to candidates slated in the Democratic Primary by an organization such as the D.C.R.G., the costs are nevertheless staggering. In 1970 Candidate John Boyle, heavily supported by the D.C.R.G. precinct apparatus (See Bock Dep. 59-9, Exs. 4 & 5), reported expenditures of $22,409. (Def. Ex. 10). His report made no mention of the substantial expenditures incurred on his behalf by the D.C.R.G.

equally the poor" (App. 30A) and delimiting of "candidates and political associations." (App. 29A)."

In *Bullock v. Carter*, ...U.S..... 92 S.Ct. 849, (1972) this Court found that the Texas Primary filing fee system "creates barriers to candidate access to the primary ballot, thereby tending to limit the field of candidates from whom voters might chose." 92 S.Ct. at 856. "Examined in a reasonable light" *ibid*, the at-large scheme in Dallas County imposes an even more dramatic limitation upon voters and candidates.

Legislative contests in the Democratic Primary have become relatively infrequent (Tr.213) as a direct result of the high campaign costs in the county-wide legislative district. (Tr.341)." The effect of the high costs is not limited to the Democratic Primary. The Republican Party has had difficulty in recruiting candidates because of the at-large representation scheme (Tr.811) and in 1970 abandoned efforts to "field a slate of candidates for the State legislature" because of the enormous cost of such races. (Tr. 813, 826-7).

This Court invalidated the Texas Primary filing fee because: "Not only are voters substantially limited in their choice of candidates, but there is the obvious likelihood of this limitation falling more heavily on the less affluent segment of the community, whose favor-

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[36]The intervenors Reed, Goodwin and Moss, former Dallas legislative candidates, alleged that the at-large districts resulted in "the cost of running an effective primary and general election campaign for a representative of the Texas House of Representatives is beyond the financial means of lower and middle income persons." The record fully confirms the truth of the allegation.

[37]By contrast, the single member districts in which the 1972 Dallas primaries were held produced hotly contested races in both the Republican and Democratic primaries; 68 candidates in the Democratic and 32 in the Republican. (Sec'y of State, Certification of Primary Results 1972).

ites may be unable to pay the large costs required by the Texas system." *Bullock v. Carter*, ...U.S.....,
92 S.Ct. at 856. The county-wide legislative district, and the costs attendant to any campaign, have precisely the same effect. The record establishes that the maintenance of the county-wide district in Dallas was attributable at best to a political whim—there is no State policy that calls for the imposition of such hardship upon the electorate and potential candidates. The State "claims to be protecting" no interest, and the "interests of those who are disadvantaged by the classification" require invalidation of the county-wide scheme, *Williams v. Rhodes* 393 U.S. 23, 30 (1968).

THE COUNTY-WIDE LEGISLATIVE DISTRICT IN DALLAS RESULTS IN A DENIAL OF EQUAL PROTECTION TO THE BLACK MINORITY OF THAT COUNTY

The Dallas County Legislative District envisioned the election of 18 Legislators at-large; it contained no provision for geographic distribution of Legislators. This county-wide district would simply continue to freeze the Negro citizens of Dallas County[28] into a position as a permanently disadvantaged minority.[29]

[28]220,000 of the 1,827,000 citizens of Dallas were identified as Negro by the 1970 census; 90% are concentrated into an area which is 90% Negro. (Pl. Ex. 1, Tr. 200.)

[29]As testified by Dr. McClesky:

> "The rules of the game—the political game in this State—were fixed and crystallized pretty much in the first half of the 20th century when Blacks were effectively and almost entirely excluded from the political process . . ." (Tr. 290) and "in order for the group to have influence over the elected representative, it is going to be important that they have some kind of veto power over his election or some opportunity of his dis-election if he proves unsatisfactory. And, this is simply so much harder to do in a large multi-member district, because the minority is in a submerged posi-

This invidious effect is undoubtedly the product of a combination of factors, including historical exclusion of the Negro from the political process in Texas, the continued presence of racial hostility as a factor in Dallas County politics, and perhaps of most importance, the mammoth size of the legislative district and the severe dislocations thereby imposed upon the democratic processes.

THE EXCLUSION OF THE BLACK COMMUNITY FROM THE SELECTION PROCESS

Historically in Texas, Negroes have been excluded from meaningful participation in the political processes of the State. "From 1900 until 1966 no Black or Negro citizen of the State of Texas was the nominee of the Democratic or Republican Party for any elective office in the State of Texas," (Pre-trial order). It was only in "the decade of the sixties" that there was "really brought the unfolding of participation on the part of Blacks." (Tr. 291). In 1967 the first Negroes of the Twentieth Century were elected to serve in the Texas Legislature.[*] One of these was Joe Lockridge from Dallas. The election of Lockridge was attributable to a decision by the dominant political organization, the D.C.R.G., to slate a Black candidate in the Democratic Primary. (Tr. 265-6). The Black community did not select Lockridge as a candidate on the D.C.R.G.'s slate. (Tr. 277). He was, in the words of

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tion; it doesn't have the visibility and it doesn't have the strength. And, what you end up with, I am afraid, is a creation of permanent minorities and permanent majorities. And, this is something that, well Madison warned us about in the Federalist papers." (Tr. 291-2).

[*] Joe Lockridge, of Dallas, and Representatives Graves and Jordan, of Houston. (Pre-trial order).

Councilman Allen, "selected, frankly, by our downtown friends" and then the Black community was advised. (Tr. 709-10). The decision to include a Black candidate on the D.C.R.G. slate did not occur until the plaintiffs in *Kilgarlin*[41] challenged the at-large districting scheme in Dallas County because it resulted in denial of participation to the Negro community. It was the unanimous view of those most familiar with Dallas County politics, and the finding of the Court, (App. 40A) that the establishment of a Black seat in the Dallas County legislative delegation had done little to increase the participation of the Black community in the electoral process of Dallas County. Black candidates cannot achieve the Democratic nomination for the Legislature without the support of the D.C.R.G. (Tr. 276, 352, 686) and the Black community simply has no participation in the decision making processes of the D.C.R.G. and its all-important slate making. (Tr. 687, 418). As found by the trial court, "The Black community has been effectively excluded from participation in the Democratic Primary selection process." (App. 40A). The Democratic nomination remains the crucial determinant.[42] Only one of the fifteen Dallas County Legislators was Republican in 1970 and he was able to win only by dint of substantial expenditures, $31,000, (Tr. 815)), and endorsement in the general election by the D.C.R.G. and all major newspapers (Tr. 816). Even with all of this effort his winning margin was 730 votes out of 247,000. (Tr. 816).

The deleterious effect of the county-wide districting scheme is felt everywhere. It enhances the power of an organization such as the D.C.R.G. because the task of

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[41] *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D.Tex. 1965).

[42] For example, in 1970 there were 130,000 votes in the Democratic Primary and 18,000 in the Republican. (Pl. Ex. 91).

fielding and financing eighteen legislative candidates in a district of 1,300,000 persons is so formidable. The only candidates who have a chance of success are those for whom the D.C.R.G. is prepared, in its own words, to "exert extraordinary effort in the Precincts to insure your nomination in May and your election in November." (See Pl.Ex.53). It is not just the cost of election that enables the D.C.R.G. to predetermine the outcome. Communication barriers created by a district so massive prevent a voter from even recalling the names of the candidates without the aid of some crutch."

The county-wide scheme not only enhances the power of the D.C.R.G., but it stifles effective competition in either the Democratic Primary or in the general election. Thus independent candidates are simply unable to muster the estimated $87,000 to finance a legislative race. (App. 28A) and the Republican Party has been discouraged by these same cost factors from attempting to mount a serious challenge to the Democratic nominees for the Legislature. (Tr. 815, 827). The beleagured Black minority has nowhere to turn; there are no rival institutions to which they can attach their loyalty in an effort to break out of their disadvantaged position. The absence of Negroes from the nominees of the Democratic Primary and the Legislature is not simply "a function of losing elections"" but rather is a logical consequence of a political system that has

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"See the D.C.R.G. slate card for the Democratic Primary, admonishing the voter, "You will find over sixty candidates on the Democratic Primary ballot this Saturday; choosing will be difficult . . . Please use the convenient card on Saturday to help remember names." (Ex. 16, attached, Bock Dep.)

"*Whitcomb v. Chavis*, 403 U.S. 124, 153 (1971).

frozen Blacks into a permanent minority position."

THE PREJUDICIAL REPRESENTATION OF THE BLACK COMMUNITY

Dr. Conrad, Negro member of the School Board was firmly of the view that the Dallas County legislative delegation was "most definitely not" responsive to the needs of the Black community of Dallas. (Tr. 404)." The Court found a "recurring poor performance" by the Dallas legislators concerning the representation of Black interests. (App. 41A)." In large measure this conclusion is demonstrated by the tactics of those who dominate Dallas County legislative politics, the D.C.R.G. In 1970, two independent candidates, one Black, Brashear, and one White, Stehr, forced two of the D.C.R.G. candidates into run-offs in the Democratic Primary. The two independents ran with the overwhelming support of the Black voters, receiving respectively 90.2% and 87.6% of the votes in the Negro precincts. (Pl.Ex.9). The D.C.R.G., alarmed by the support of the independents were receiving in the Negro community, warned its white adherents of the "block voting tactics" in the Negro areas of the County. (Pl.Ex.54, 55, Bock Dep. 57-9, Tr. 236). In a broad mailing to the white precincts, the D.C.R.G.

"The ventilating effect of single member districts on the political process of Dallas County was demonstrated in the 1972 elections which were held in single member districts. Three Black legislators were elected, together with seven Republican legislators. (Sec'y of State of Texas Certification of Results of General Election.)

"Representative Graves testified that from his observation of the Texas Legislature, racial considerations still played a significant role in determining legislative decisions. (Tr. 123, 124, 137.)

"See fn.22, supra, for a description of the Black ghetto of Dallas.

attacked Stehr: "Words cannot describe his political philosophy any better than do the enclosed copies of a letter bearing his signature." (Pl.Ex.54). The enclosed letter had been written by Stehr the previous year as an invitation to a church dinner, announcing that the proceeds "will be used for voter registration activities mostly in predominantly Black or Latin-American neighborhoods." (Pl.Ex.54) It was not Stehr's platform that the D.C.R.G. sought to attack, rather, it was his "philosophy", i.e. participation in biracial voter registration efforts. The D.C.R.G. campaign was effective, and despite the heavy support in the Black precincts, the independent candidates were submerged in the county-wide totals, Stehr receiving only 33% in the white precincts and Brashear 27%. (Pl.Ex.9).

It was George Bock, Chairman of the D.C.R.G. and Secretary of the County Democratic Executive Committee, who prepared the anti-Stehr mailing (Bock Dep. 57) for distribution by the D.C.R.G. organization. Those who know Dallas County politics best, know that when the chips are down, the most effective appeal to the white voter is to frighten him with the prospect of block voting in the Negro precincts.[48] And the most damaging "philosophy" of all is sympathy toward the interests of the minority communities. An organization that relies upon such tactics cannot be responsible to the Black community; a candidate elected on the basis of such an appeal cannot deal fairly with the very segment of the population he has chosen to isolate by his campaign tactics; and finally, an electorate that

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[48]As recently as 1958 the Dallas Morning News, in a lead editorial, urged the defeat of a U.S. Senate candidate because he had the "support of NAACP rank and file." (See Pl. Ex. 82).

is still responsive to such appeals will be unlikely to insist that Black interests be given equal consideration.

The result of the county-wide legislative district in Dallas is prejudicial representation of the Black community. Whether by design or otherwise, the at-large scheme operates "to minimize or cancel out the voting strength of racial . . . elements of the voting population." *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965); *Burns v. Richardson*, 384 U.S. 73, 88 (1966). The trial court quite properly held the "use of the multi-member district in Dallas County unconstitutional." (App. 42A).

CONCLUSION

We respectfully submit that if jurisdiction lies, the judgment of the trial court should be in all respects affirmed.

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No. 72-147

JAN 27 1973

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1972

BOB BULLOCK, ET AL., APPELLANTS

v.

DIANA REGESTER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

APPELLEE'S BRIEF

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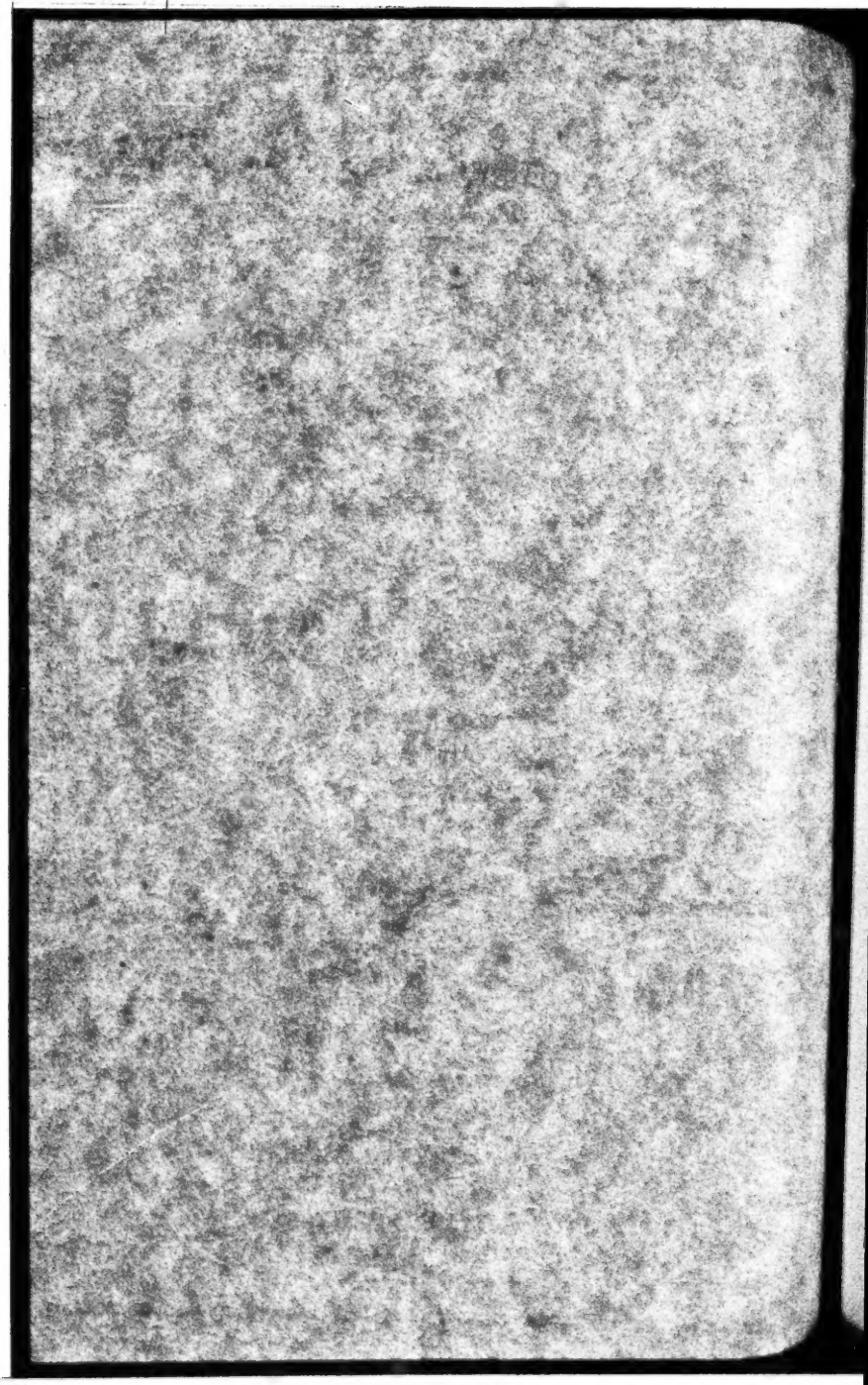

NO. 72 — 147

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

Bob Bullock, Et Al., Appellants

Versus

Diana Regester, Et Al., Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF OF APPELLEES THELMA WASHINGTON, ET AL. AND GEORGE L. ALLEN, ET AL.

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JURISDICTION

The case before this Court is the result of four (4) consolidated actions resulting from four (4) separate cases filed in four (4) separate district courts. Members of several classes were permitted to intervene, both individually and in their respective capacities, and to maintain their actions as class actions. The classes included: (1) black citizens and voters of Dallas County, (2) Mexican-American citizens and voters of Bexar and Dallas Counties (as well as other counties), (3) Republicans citizens and voters of Dallas County, (4) poor and middle class citizens of Dallas County, desiring to vote for and run for the office of State Representative, (5) white, black, and Mexican-American Citizens and voters are members of the AFL-CIO, an unincorporated association composed of working men and women throughout Texas, and (6) certain black office-holders in Dallas County. (A. Jur. S 4A).

The Motions to intervene were granted only with respect to the individual and official capacities of the intervenors. (A. Jur. S. 4A) The Motions to sue or to intervene as classes were denied in the interests of sound judicial administration of the four cases and the pleadings were amended to eliminate references to class representation. F.R.Civ.P 23 (d) (4). (A. Jur. S. 4A-5A)

The Three judge Court was unanimous on all issues raised coterminously in the Tyler case and in the consolidated cases from the Northern and Western districts. (A. Jur. S. 5A)

An order setting up a Three Judge Court in each of the four cases entered on the 13th day of December, 1971, and consolidated for hearing and submission and transferred to the Austin Division of the Western District of Texas. The order also provided the following:

> "The Courts as constituted each have plenary power over all questions including, without limitation, the extent to which any one or more or all of the issues in each of the cases is for determination by a three-judge court or a single judge, and the nature, kind of character or relief to be granted or the form or content of any decrees and orders (whether separately or consolidated)." (A Jur. S. 7A)

At a joint pre-trial conference held at Austin, Texas, on December 22, 1971, the managing judge of the three-judge court entered an order providing for expedited discovery procedures in view of the filing deadlines of February 7, 1972, for candidates for office in Texas. It was also ordered that the

Chairman of the Republican State Executive Committee and the Chairman of the Republican Executive committee of Smith County be realigned as plaintiffs. At a final joint pre-trial conference on December 31, 1971, it was stipulated by the parties to all four actions that any evidence heard in relation to any one case could be considered by the Court with regard to all cases. (A. Jur.S. 8A)

Pursuant to the pre-trial Order, depositions of the members of the legislative Redistricting Board, the staff of that Board, and several oher persons, during and after the trial of this case, with the bulk of the depositions being taken during the week of December 27-31, 1971, in the office of the attorney General and others in Dallas and Houston, Texas.

Trial was begun before the Three Judge Court in Austin, Texas, on the 3rd day of January, 1972, and lasted for three and one-half days during which time the Court heard live witnesses, lay and expert, received numerous depositions and exhibits, which were admitted into evidence, attached to the final pre-trial order when no objections were made thereto. (R. 224-225) The Court considered the case for more than three weeks and issued a Per Curiam Opinion on January 28, 1972, (A Jur. S. 1A-62A) and an Order, dated January 28, 1972, (A Jur. S. 63A-64A), with Exhibits (A. Jur. S. 65A-82A).

District Judge Justice concurred "in the Court's opinion in all respects, with the exception of its refusal to grant relief in the action brought in the Houston Division of the Southern District of Texas by certain black voters of Harris County, challenging the Aeapportionment Plan of the Texas Senate as that Plan applies to Harris County." (AJur.S. 83A) District Judge Wood Concurred in part and dissented in part (A.Jur. S. 97A-108A), but with respect to the Dallas part of the Case concurred in the Court's Opinion, which will be referred to later in this Brief, footnote 10. Circuit Judge Goldberg concurred specially in the results of Section Four (4) of the Opinion, (A.Jur.S. 109A), which was not concerned with the Dallas County Multi-member District issue.

Application for stay of that portion of the lower court's judgment immediately implementing single-member districts in Dallas and Bexar Counties was presented to Mr. Justice Powell and by him Denied, with opinion, Noting that the only present necessity to consider a stay relates to the District Court's decision with respect to multi-member districts in Dallas and Bexar Counties. (App. 199H, 197H-201H). The State election process consequently proceeded in accordance with the

District Court's decision; primary and general elections using the redistricting plan for the House found to be deficient, except in Dallas and Bexar Counties, where the primaries were held pursuant to the single-member districting plans adopted by the Court, 405 U.S. 1201 (A.Jur. S. 197H).

Because of clerical errors, on the Motion of Plaintiffs, an Order was granted on the 8th day of February, 1972 making the necessary clerical corrections and errors. (A. Jur. S. 110A-113A)

Notice of Appeal was filed March 27, 1972 by the Appellants. (A.Jur. S. 114B-118B)

Motions to Dismiss or Affirm was filed with this Court by Plaintiffs and Intervenors, contesting the Jurisdiction of this Court.

This Honorable Court noted Jurisdiction on October 10, 1972 (————U.S.————); with the Appellants contending that this Court had Jurisdiction in this case under provisions of 28 U. S. C. Sections 1253 and 2101 (b).

CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

The equal protection clause of the Fourtennth Amendment to the Constitution of the United States is involved, Article III, Section 26 and 28 of the Constitution of the State of Texas (A. Jur. S. 174E-175E), which provides for State Apportionment Plan of Texas in Representative Districts. (A.Jur.S. 118C-132C). Also involved is 28 U. S. C. Section 1253.

QUESTION PRESENTED

1. Whether the Multi-member District in Dallas County tends to and operates to minimize, dilute or cancel out the voting strength of Dallas County's Negro Minority?

STATEMENT

The Plaintiffs-Intervenors, Appellees herein, for whom this Brief is filed, are Members of the Negro Race, residents of Dallas County, voters and certain Negro Officer Holders, i.e., one being a Dallas City Councilman, one being a Trustee of the Dallas Independent School District and the third a State Representative of the Texas House of Representatives. Their concern is primarily with the issue mentioned hereinabove, but they have an overall concern with respect to the Reapportionment plan promulgated by the Legislative Redistricting Board on the 22nd day of October, 1971, the Constitutionality of same and its effect State wide. However, it is felt

that other Plaintiffs and Intervenors who have a more direct concern with other basic and State wide issues concerning the legislative redistricting plan published by the Board will address themselves to these issues, and it would only belabor the point and possibly unduly cause unnecessary confusion herein, which is not needed when one considers the size of the record in this case. Therefore, the Appellees, George L. Allen, et al and Thelma Washington, et al will limit and confine their Brief to the sole issue and question mentioned above. However, in doing so, there may be argument made concerning the rationality of the multi-member district adopted by the Legislative redistricting board for Dallas County as opposed to the single-member plan adopted for Harris County.

The Three Judge Court, in its Per Curiam Opinion, concluded "that the Dallas Plaintiffs have shown, in accordance with the standards laid down by the Supreme Court in the Whitecomb case—2, that a multi-member district in Dallas County tends to dilute or cancel out the vote of Dallas County's Negro Minority. Accordingly, we hold the use of a multi-member district in Dallas County unconstitutional." (A. Jur. S. 42A)

The Court below in reaching its decision found, among other things, that the legislative district created by the Legislative Redistricting Board for Dallas County comprises a multi-member district with a population in excess of 1,3000,000—3 (A.Jur.S. 37A); unlike the plurality system in Indiana, Texas has a strict "majority" requirement in the primary—4 (A.Jur.S. 38A); that whatever its constitutional status, it is clear that the majority system tends to strengthen the majority in a multi-member district (A.Jur. S. 38A); in combination with the majority requirement, there exists in the Texas political repertoire the "place" requirement—5 (A.Jur.S. 38A); that there exists no provision for at large candidates running from particular geographical subdistricts—6(A.Jur. S. 38A), that unlike the State of Indiana, Texas has a rather colorful history of racial segregation (A. Jur. S. 38A); that the number of black community residents who have beeen legislators is not in proportion to grettoo residents, but also that the black community has been effectively excluded from particivation in the Democratic primary selection process (A.Jur.S. 40A); that it is extremely difficult to secure either a representative seat in the Dallas County delegation or the Democratic primary nomination without the endorsement of the Dallas Committee for Responsible Government (hereinafter referred to as the DCRG) (A. Jur.S. 40A); that white candidates endorsed by the DCRG

in either a primary or general election can win in a county-wide race without appealing to the Negro vote—7 (A.Jur.S. 40A); that the Negro community in Dallas County participates in the selection of the Democratic primary candidates only in the recruiting process (A.Jur.S. 40A-41A); that the plaintiffs (Appellees herein) have shown that Negroes in Dallas County are permitted to enter the political process in any meaningful manner only through the benevolence of the dominant white majority. If participation is to be labeled "effective" then it certainly must be a matter of right, and not a function of grace (A.Jur.S. 41A); that the record evinces a recurring poor performance on the part of the Dallas County delegation concerning the representation of black interests in the Texas House of Representatives—8 (A.Jur.S. 41A); and that hostility toward the black community is still an integral part of Dallas County politics—9. (A.Jur.S. 41A)

Based upon these findings, the Court concluded that the use of a multi-member district in Dallas County violates the equal protection clause in accordance with the standards of proof enunciated in Whitcomb—10 (A.Jur.S. 40A)

ARGUMENT

These Appellees realize and understand that this Court has stated that it "deemed the validity of multi-member district systems justiciable, recognizing also that they may be subject to challenge where the circumstances of a particular case may operate to minimize or cancel out the voting strength of racial or political elements of the voting population.' Fortson, 37 9US, at 439, 13 L Ed 2d at 405, and Burns, 384 US, at 88, 16 L Ed 2d at 388. Such a tendency, we have said, is enhanced when the district is large and elects a substantial proportion of the seats in either house of the legislature or if it lacks provisions for at-large candidates running from particular geographical subdistricts, as in Fortson. Burns, 384 US, at 88, 16 L Ed d at 388. But we have insisted that the challenger carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements. "Whitcomb 403 US at 143-144.

Appellees respectfully submit that they have carried the burden of proof required of the challenger in the Whitcomb case, in the instant case, as the Court below so found.

It is undisputed that Dallas County, at the time the multi-member District plan adopted by the Legislative Redistricting Board for Dallas County, consisted of more than 1,000,000, with a Negro population consisting of more than

seventeen percent (17%) living in Dallas County. However, the percentage living within the City of Dallas was even more dramatic in 1970, in that the percentage wa s24.9%—" almost one out of four inside the City of Dallas. (R. 202). Appellees' Exhibits 4 showed that the forty-five predominately Negro tracts in 1970 had a total population of almost 222,000, and Appellees" Exhibit 5 showed that the Negro population of these fifty-five predominately Negro tracts, was close to 198,000, which meant that close to ninety percent of the area was Negro. (R.208) This area as demonstrated by the record was the South and Southwest part of Dallas.

The Record, Exhibits (Some 90 or more—R.224) and Depositions all showed that under the legislative redistricting plan Dallas County was entitled to Eighteen (18) legislators, all of whom were to be elected by place but on an at large basis and not from single member particular geographical subdivisions. Under the holdings in the **Fortson, Burns,** and **Whitcomb** cases, the multi-member district, if large as is Dallas County, tends to operate to minimize or cancel out the voting strength of racial or political elements of the voting population if it lacks provisions for at-large candidates running from particular geographical subdistricts. In Dallas Council, the plan approved by the legislative Redistricting Board left the County multi-member with no particular geographical subdistrict which would determine residency requirements of expected applicants.

The total Record before this Court and which was before the Court below would show that the real-life impact of multi-member districts on individual voting power in Dallas County has been sufficiently demonstrated, and particularly upon the Negro voter who is concentrated almost 90% in one area of the City and County. To support this, the record reflects that only two (2) Negro candidates have ever been elected to the Texas Legislature from Dallas County and in each case this was after they had been placed on the DCRG Slate.—11 Moreover, the record reflect that where Negro candidates have not been placed on the DCRG Slate, then they were unsuccessful.—12

The multi-member district in Dallas County, if not conceived as a purposeful device to further racial or economic discrimination, then it is unquestioned under the facts of the case before this Court that it was purposeful operated as a device to further racial or economic discrimination. No Negro or other minority candidate was slate by the DCRG in the Legislative Primary races until 1966. Prior to the slating

of the first Negro—13, the cost of running County wide, under the multi-member District, in Dallas County was astronomical and completed beyond the reaches of the average or above average Negro. The cost of reaching more than 1,300,000 by television, newspaper, radio and mailing was so exorbiant that, without the "slating" of the Negro candidate with the DCRG Team, as it was called, his chance of winning were nil, as evidenced by the loosing efforts of Berlaindr Bashear in 1970, for a seat in the Legislature. In fact, one of the successful candidates who were elcted to the legislature, Rep. Zan W. Holmes, Jr., testified he "could not have been elected if I had not had that (DCRG) support, financial and otherwise. (R. 424) Thus it is evident that the people that controlled the DCRG used and operated the multi-member district purposeful and as a device to limit the number of Negroes on the slate and before 1966, to keep them off altogether.

The Record reflects that under any fair single member plan that would be drawn, that the Negro minority would receive or be able at least to elect three (3) and possibly four (4) State Representatives, with capabilities to influence the outcome of the candidacy and election of a State Representative who was sensative to their wishes, in a fifth district. Appellants admit that "Numbers alone would indicate that about 3 of the presently apportioned 18 representatives for the County should be Negroes." (Jur.S. 21) Appellants further admit in their brief that the number of Negro residents who were legislators was not in proportion to the Negro population. However, the Appellants argue that the poor Negroes were not denied the right to participate in the political processes and to elect legislators of their choice. What the Appellants fail to say is that this participation occurs in the general election, when the contest has boiled down to any contested raced between the Democrats and the Republicians. It fails to take into consideration that there is a primary election in the Democratic party, wherein the DCRG sponsors candidates, supports them financial and otherwise, and slate them as a team. Appellants own witnesses show that the controlling Board of Directors of the DCRG, or its governing and selecting Body, consists of at least one and possibly two Negroes. One witness could not even give the name of one black in the DCRG, i.e., Utah Kirk. There is no evidence how these persons (Negroes, if more than one or any) are selected, what their powrs are in connection with the DCRG, whose sole reason is for determing who the legislative representatives from Dallas will be and will represent Dallas County in Austin, Texas. The fact that the Negroes in Dallas County were allowed the right to register or vote, choose the political party they desired to

support to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen in the Democratic party, misses the point and begs the question. The key is the fact that there is a group that is composed of members of the Democratic party, and operates with its sanction, for you cannot vote for the DCRG candidates unless you vote Democratic in the primary election, who have the power, both political and financial, to determine who will not be on the slate of the DCRG in the primary election. And it is in the Democratic Primary that the basic issue of who is going to run in November in the General Election is made. It is in the DCRG control primary that the poor Negroes and all Negroes that comprise that 90% area is denied the right to vote or register, if they wish, and to participate in the affairs of the DCRG or to even be equally represented on those occasions when legislative candidates were chosen. The Appellants, who had witnesses that could testify as to the activities failed and did not show that that 90% of the Negroes in the South and Southwest part of Dallas Couny participate in the affairs of the DCRG or was equally represented on those occassions when legislative candidates were chosen.

Moreover, the record in this case clearly showed that the 90% of the Negroes, living in the area referred to in Appellees' Exhibits 1 through 5, were regularly excluded from the slates of the DCRG. The DCRG, the controlling force in the legislative races in Dallas County, has slated only two Negroes, namely, Joseph E. Lockridge, Deceased, and Zan W. Holmes, Jr., who was "asked" to run in a special run-off election to fill Representative Lodgridge's remaining term. Even here it may be observed that the white majority DCRG was still pulling the strings and telling the Negro minority that they could have their one (1) place and not giving them an opportunity to seek elections on the slate for more than one position, or even determine who else would be on the slate.

Appellants argue that the Negro minority in Dallas County, under the multi-member district, could not be overlooked by the Democratic party in slating its candidates. This is true — in the General Election. But the General Election, as previously indicated, is not where the primary determination is made as to who will represent Dallas County in the Legislature, the make up of the delegation from Dallas or the number of Negroes on the slate. That determination is made in the Democratic Primary, where the Democratic Party allegedly stands to the side and take no part — thereby letting the DCRG become the dominant entity which will determine the slate for the Democratic Party in November.

And it is here that the DCRG can afford to overlook the Negro minority voters and in fact has overlooked the Negro minority, except recently in gratitutiously and benevolently slating One Negro on the Team in each primary election and not the Negroes' proportionate share. The Numbers along prove that the DCRG can completely afford, and has done so, to overlook the Negro Minority, when one considers 222,000 against more than 1,000,000 plus. These numbers along shows that under the multi-member district plan under existence before the lower Court's single member plan that the DCRG in the primary election could completely write off the Negro vote, determine who the candidates would be and proceed to elect them. Once the primary election was complete and the DCRG slate was chosen and became the slate for the Democratic party in the general election, the Negro had no choice but to vote for the Democratic slate, if that was his wish, or just go fishing. In other words, who the State representatives were to be, were predetermined without the area of Negroes previously referred to having any sa yso whatsoever. This is true also with respect to the other members of the slate who were not Negroes, because they were not consulted in the selecting process of the remaining members of the slate, and thereby have an opportunity to participate in the selection of white candidates that might be or would be considerate of their feelings, needs and wants. Under the facts of this case, it cannot be said that the failure of the Negro minority to have legislative seats in proportion to its population emerges more as a function of loosing elections than of built-in bias against the Ninety per cent (90%) Negroes living in South and Southwest Dallas County, under the multi-member district plan.

The record before this Court reflects that there were unique needs of the Negro minorities in Dallas County, and that the Negro elected on the slate to represent Dallas County was expected to represent the black community in Dallas County, Texas. (R. 428) Moreover, the other members, or the majority of them, do not share the sensitivity to the needs and aspirations of the black community. (R. 428-430). If state legislators were elected from particular geographical single member districts in Dallas County with residency requirements within that sub-division or sub-district, then the needs of that representative's district could be more easily made available to him, he would be more sensitivity to the needs of his district and more importantly of all, the people of the district would be able to know who their state representative was. They would not owe partial allegiance to 15 or 18 representatives

but to three or four, and in a pure single member district, based upon contiguousness, economic interests and etc., the representatives that were elected from the Negro Minority, and, drawn without any conditions or considerations of gerrymandering, would be entitled to at least three with a possibility of one other and the capabilities of influencing the type of candidate and the outcome in a fifth district. Under the multi-member district plan proposed by the Legislative Redistricting Board and forced upon Dallas County, this would not be true for the Negro Minorities in the areas designated in Appellees Exhibits 1 through 5, and designated as the area where more than 198,000 Negroes out of 220,000 live, but return Dallas County to the former domination—14 of the DCRG, who would continue their old ways of doing business as evidenced by the questioning of Earl Luna, Esq. Chairman of the Dallas County Democratic Party and the Attorney for Roy Orr, State Democratic Chairman, that they were going to put three Negroes on the Slate and had passed a resolution to do so. In other words, if the Lower Court's Order is Reversed with respect to Dallas County, and the Legislative Redistricting Board's plan for Dallas County to remain multi-member, then the performance of the Dallas County legislative delegation in being responsive to the needs of the Negro community on special issues of majority interest to that community would be the same and that response in the past, which had been low (R. 447-449), would continue. It would be the participating of the Negro minority in the recruiting stage and not participation in the overall scheme of deciding the outcome of the entire delegation in the primary. The multi-member District plan for Dallas County would allow the DCRG, in the primary where the issue of who is going to represent Dallas County in the State Legislature, to continue it same benevolent and paternalist attitude toward the Negro Minority in Dallas County.

Under the multi-member District in Dallas County, the Negroes' chance of influencing the election of an entire slate was not as significant as the guarantee of three Negro representatives of their choice, selection and who was sensitive to their particular problems, as evidence by the testimony of State Representative Zan W. Holmes, Jr., which would make him a more independent representative and better for all of Dallas County, Texas.

Appellees submit that an analysis of the evidence, and naturally the reasonable and credible admissible evidence, and not as Appellant's Brief infers, clearly demonstrates that

the Negro Community has been denied effective access to the political system and that their vote can be ignored in the primary election by the DCRG, whose winners are theen slated by the Democratic Party. It is untrue that Negroes hold numerous county-wide offices — the only county wide held office at the time of Appellants' Brief was one State Representative, unless Appellants were including in this figure maids, janitors, maintenance men, message carriers and other such type of persons who have no decision or policy making powers and not including persons with administrative ability. As to the other allegations, as to hearsay, rank conclusions and in luendos with respect to the Lower Court's Opinion, they are not worthy of replying to and one would not expect same in a brief to be filed before this Honorable Court. Appellees submit that the evidence and findings required by Whitcomb have been satisfied and that the evidence needed and outlined in Whitcomb has preponderated in the instant case.

In preparing this Brief on behalf of the Appellees herein, the guidelines and requirements of proof set out in Whitcomb have been taken into strictest consideration, and the Dallas case has been measured by those guidelines to ascertain whether or not the guidelines were met and the proof sufficient. Appellees submit that they have done both.

Appellees further submit that the Appellants cannot offer the same rationale for its apportionment of Dallas County as Harris County. The different treatment of Houston from Dallas refutes the Whitcomb rationale at the threshold. Neither has Appellants attempted to justify the different treatment of Houston candidates on the basis of Whitcomb because its own internal inconsistencies in its treatment of Texas cities erases the general Whitcomb rationale for maintaining multi-member districts in metropolitan areas and particularly Dallas. Kilgarlin v. Martin, 252 F. Supp. 404 (D. Tex. 1966), reversed in parsub nom Kilgarlin v. Hill, 386 U. S. 120 (1967) does not justify the rationale.

As the Court below stated:

> "Dallas County in 1971 fits all the elements of the Kilgarlin rationale for single-member districting, and yet Dallas remains a multi-member district, against the wishes of Dallas citizens we might add, while Houston has been subdivided even further than it was in the 1966 plan discussed in Kirgarlin. We can only conclude, as we did earlier, that there is simply no credibility left in the rationale advanced by the State in Kilgarlin. A

state that inexplicably abandons an allegedly' compelling state interest' only five years after arguing it can hardly raise it from the dead at this point in the apportionment process." (A. Jur. S. 34A)

Appellees submit that they have shown that the use of a multi-member district in Dallas County violates the Equal Protection clause in accordance with the standards of proof enunciated in Whitcomb.

CONCLUSION

For the foregoing reasons, the Appellants' Appeal should be dismissed for want of jurisdiction or, in the alternative, the Judgment of the District Court should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

The Undersigned, a member of the Bar of this Court, hereby certifies that a copy of the foregoing Brief of Appellees has this the 24 day of January, 1973, been served upon each counsel of record for Appellants in accordance with Rule 33 of this Court, by depositing the same in a United States mail box, with first class postage prepaid, addressed to said counsel at their post office addresses.

E. BRICE CUNNINGHAM

FOOTNOTES

1. A. Jur. S. refers to Appendix to Jurisdictional Statement. R. refers to the Record. Dep. refers to the Desposition. Jur. S. refers to Jurisdictional Statement.

2. Whitcomb v. Chavis, 403 U. S. 124 (1971).
Burns v. Richardson, 384 U. S. 73 (1966).
Fortson v. Dorsey, 379 U. S. 433 (1965).

3. Thus, Dallas County's multi-member district is approximately three times as large as a congressional district in Texas, almost twice the size of the multi-member district that the Supreme Court had before it in Whitcomb v. Chavis, and it has a population greater than that of fifteen states.

   The Dallas County multi-member district has a greater population than the following states: Alaska (302,173); Delaware (548,104); Hawaii (769,913); Idaho (713,008); Maine (993,663); Montana (694,409); Nevada (488,738); New Hampshire (737.681); North Dakota ,617,761); New Mexico (1,016,000); Rhode Island (949,723); South Dakota (666,257); Utah (1,059,373); Vermont (444,732); and Wyoming (332,416). (A. Jur. S. 37A-38A)

4. Virtually unknown outside the South, the majority requirement has not escaped considerable criticism on both fourteenth and Fifteenth Amendment grounds. See Evers v. State Board of Election Commissioners, S. D. Miss, 1971 327 F. Supp. 640; Boineau v. Thornton, E.D.S.C. 1964, 235 F. Supp. 175.

5. In essence, each candidate must limit his candidacy, in either a primary or a final election to a particular place on the ballot. Since the place requirement means absolutely nothing in terms of residence, its ultimate effect is to highlight the racial element where it does exist. (A. Jur. S. 38A)

6. Thus, in Dallas County it is entirely possible for each and every one of the district's eighteen representatives to reside in the same apartment complex. (A. Jur. S. 38A)

7. Essentially, the plaintiffs have shown that the DCRG, without the assistance of black community leaders, decides how many Negroes, if any, it will slate in the Democratic primary. 17 The DCRG then informs some black community leaders of its decision with respect to how many Negro candidates it will slate, and not how many candidates it will slate who are sympathetic to the problems and interests of the black community.

17 Since the Reconstruction Era, there have been only two blacks from Dallas County delegation to the Texas House of Representatives. In addition, these have been the only two blacks ever slated by the DCRG, and the first was not until 1966. (A. Jur. S. 40A)

8. State legislators from Dallas County, elected countywide, led the fight for segregation legislation during the decade of the 1950's. Indeed the record reveals that during the late 1950's not one member of the Dallas County Delegation voted against certain segregation measures introduced in the Texas House. (A. Jur. S. 42A)

9. As recently as 1970, the DCRG was relying upon racial campaign tactics in white precincts to defeat candidates who had the overwhelming support of the black community. So long as the organization that dominates the county-wide Democratic primary in Dallas County relies upon such a racial appeal to defeat black favored candidates, we think it highly unlikely that candidates elected on such a platform could seriously represent in the Texas Legislature the best interests of Dallas' black community. (A. Jur. S. 42A)

10. "While I deplore, as heretofore state, the intrusion of the Federal Courts in the legislative affairs of the democratically elected officials of the soverign State of Texas, **Whitcomb v. Chavis**, and its progeny, dictate that Federal Courts must do so where the preponderance of the evidence discloses that the State action "operates to dilute or cancel the voting strength of racial or political elements." In this connection, I personally feel that the evidence does in fact preponderate in this direction and that, based on this test, I concur with my colleagues that the Board's Reapportionmeent Plans for multi-member districts in Bexar and Dallas Counties are unconstitutional for the various reasons stated in the majority opinion." (A. Jur. S. 107A-108A)

11. Joseph E. Lockridge, Deceased, 1966 and Rev. Zan W. Holmes, Jr., 6-8-68 and 1970.

12. L. A. Bedford, Jr. 11-6-63, and before the formation of the DCRG in formal organization but he was not endorsed by any of the same groups that now make up the DCRG. Democrat. Berlaind Brashear, 1970, unendorsed by the DCRG. Democrat.

13. Joseph E. Lockridge, Deceased.

14. During the 1972 Democratic primary the DCRG endorsed and slated three Negroes on their slate. Three Negroes, selected by the Negro community, ran against the three Negroes slated by the DCRG. The Three Negroes selected by the Negro community, and particularly from the particular district that they ran from, won in each case and all three won in the general election. A fourth Negro candidate ran in a fourth district, losted, but did have an effect upon the candidate that was elected who was required to become sensitive to the Negro and make an active appeal to them against the Black Candidate and the DCRG candidate.

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NO. 72-147

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

BOB BULLOCK, ET AL., Appellants

V.

DIANA REGESTER, ET AL., Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF OF APPELLEES DR. GEORGE WILLEFORD, MR. GENE DIEDRICK AND MR. THOMAS G. CROUCH

OPINIONS

The opinion of the District Court is reported at 343 F.Supp. 704 (A.Jur.S. 1A-62A, 83A-109A).[1] The opinion of Mr. Justice Powell

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[1] "A.Jur.S." refers to the separately-bound Appendix to the Jurisdictional Statement; "App." to the separately-bound appendix to be printed; and "R." to the record. References to Appellants' Brief are, unfortunately but unavoidably, to the pagination of the typewritten version of it.

denying Appellants' request for stay is reported at 405 U.S. 1201 (A.Jur.S. 197H-201H).

JURISDICTION

The judgment of the District Court was entered on January 28, 1972 (A.Jur.S. 63A-82A)[2] and the notice of appeal (A.Jur.S. 114B-117B) was filed on March 27, 1972. This Court noted jurisdiction on October 10, 1972 (___ U.S. ___ App. ____). Appellants contend that jurisdiction in this Court exists under 28 U.S.C. §§12[illegible] and 2101(b). For the reasons set forth in Point 3 below it is our submission that this appeal is not within the jurisdiction of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First and Fourteenth Amendments to the Constitution of the United States are involved, as are Article III, Sections 26 and 28 of the Constitution of the State of Texas (A.Jur.S. 174E, 175E), providing for the times and method of reapportioning the State for elections to the lower house of the State Legislature, the State Apportionment Plan, Representative Districts (A.Jur.S. 118C-132C), and 28 U.S.C. §1253.

QUESTIONS PRESENTED

1. Whether, in the factural circumstances revealed by this record, the adoption

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[2]On February 8, 1972, the Court entered an order modifying its original judgment, noting that the modification "solely rectifies clerical errors" (A.Jur.S. 110A).

by the Redistricting Board of one system of representative government for Harris County and a differing system, which favors affluent candidates and their supporters, for other virtually identical metropolitan areas of the State constitutes an unconstitutional discrimination.

2. Whether Appellants have justified the admitted maximum population deviation of 9.9 percent between districts on the basis of any legitimate State policy.

3. Whether this Court has jurisdiction of this appeal under 28 U.S.C. §1253.

STATEMENT

This is a reapportionment case in which various officials of the State of Texas appeal from the decision of a three-judge district court, handed down on January 28, 1972. That Court entered declaratory judgment that the most recent state legislative redistricing scheme was unconstitutional, ordered the reapportionment of two of the larger metropolitan counties of the State of Texas, and took no action regarding the other 252 counties pending an opportunity for the Texas Legislature to act. The reapportionment scheme under attack was not the product of the Legislature of the State of Texas but rather of a special independent Board, the Legislative Redistricting Board, acting under extreme, self-incurred time pressures.

1. Events leading up to litigation.

Article III, Section 28, of the Constitution of the State of Texas provides that the Texas Legislature shall, at its first regular

session after each decennial census, apportion the State into senatorial and representative districts. In addition it establishes, against a failure of the Legislature to apportion, the Legislative Redistricting Board of Texas, composed of five elected officials.[3] It also requires that this Board meet within ninety days of the end of such a failing legislative session and itself redistrict the State within sixty days of its first meeting. Thus the 62nd Session of the Texas Legislature convened in January, 1971, under state constitutional mandate to redistrict both Senate and House (A.Jur.S. 9A). When it adjourned May 13, 1971 it had attempted to redistrict the House but not the Senate (A.Jur.S. 9A). It was therefore apparent by middle May of 1971 that action by the Legislative Redistricting Board would be necessary.

Ninety days were permitted for that Board to meet; it first convened on August 24, 1971, the 85th day. See Mauzy v. Legislative Redistricting Board, 471 S.W.2d 570, at 572 (Tex. 1971). By the time it convened, the House redistricting act passed by the Legislature had already been declared by the state trial court to violate Article III, Section 26, of the Constitution of the State of Texas, a decision shortly affirmed by the Texas Supreme Court. Smith v. Craddick, 471 S.W.2d 375 (Tex. 1971). The Board nevertheless refused

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[3]The officials comprising the Board are the Lieutenant Governor of Texas, the Speaker of the the House of Representatives, the Attorney General, the Comptroller of Public Accounts, and the Commissioner of the General Land Office (Art. III, §28, Tex. Const.).

to redistrict the House until ordered to do so by the State Supreme Court on September 27, 1971, in the Mauzy decision. On that date, over half of the sixty days granted the Board by the Texas Constitution to act after convening had passed. October 23, 1971 was the sixieth and last day. On Friday, October 22, 1971, the Board enacted its House plan, having enacted a Senate plan one week earlier (A.Jur.S. 9A). These suits followed.

2. Procedural matters preliminary to trial.

The order of the three-judge court dealt with four consolidated cases which were originally filed in four separate courts, the United States District Courts for the Eastern, Northern, Southern, and Western Districts of Texas, by four separate groups of plaintiffs (A.Jur.S. 3A-6A). On December 13, 1971, Chief Judge John R. Brown, Chief Judge of the United States Court of Appeals for the Fifth Circuit, entered an order constituting a three-judge court in each of the four cases, consolidated the cases for hearing and submission, and transferred them to the Austin Division of the Western District of Texas (A.Jur.S. 6A-7A). A joint pre-trial conference was held in Austin, Texas, on December 22, 1971, and Judge Justice, the managing judge of the three-judge court, entered an order establishing expedited discovery procedures (A.Jur.S. 8A). Pursuant to that order the depositions of the members of the Legislative Redistricting Board, the staff of that Board, and various public officials and private citizens throughout the State of Texas were taken during the week of December 27-31, 1971. On their own motions, certain of these Appellees, Dr. George Willeford and Mr. Gene Diedrick, respectively Chairman of the Republican State Executive Committee and Chairman of the Republican Executive Committee of Smith County, Texas, who had

been joined as parties defendant in the suit filed in the Eastern District of Texas, were realigned as parties plaintiff (A.Jur.S. 8A). On December 31, 1971, a final pre-trial conference was held where it was stipulated that any evidence heard in any one case could be considered by the Court in all (A.Jur.S. 8A).

3. Conduct of the trial.

On January 3, 1972, the three-judge court convened in Austin, Texas, heard live evidence for three and one-half days, and received numerous depositions containing further testimony. After closing arguments, the case was submitted to the Court on January 6, 1972. Throughout this extensive hearing the State of Texas maintained, as it does before this Court, that it had no obligation to introduce evidence or otherwise to justify the reapportionment scheme of the Legislative Redistricting Board, contenting itself with the general position that any population deviations between districts were trivial ones resulting from the Board's effort to observe county lines and ignoring, as does its brief here, the question of the unequal treatment by the Board plan of essentially identical metropolitan areas: Houston, Dallas and San Antonio. No evidence was offered by the State to justify the population deviations in the Board's scheme, nor any establishing any State interest in the particular reapportionment scheme adopted by the Board. Moreover, at the conclusion of the hearing on January 6, 1973, the Court requested that all parties submit proposed alternative legislative reapportionment plans, but the State of Texas refused to submit any statewide plan or even a plan for any portion of the State.

Plaintiffs, for their part, introduced both lay and expert testimony and other evidence bearing on the motives and procedures of the

Board in adopting the plans under attack; the peculiar groupings and divisions of counties to be found in the plan; the want of differences between the large metropolitan areas accorded different systems of representation under the plan, as well as the effect on candidates and voters of these differing systems; the population deviations to be found in the plan's districts; and the locations, characteristics, and past and present social and legislative treatment accorded Texas' Negro and Mexican-American citizens--with special reference to those citizens residing in the so-called urban ghettos and barrios. This evidence produced the findings of the court, detailed in its opinion and summarized in paragraph 4 following. We shall have occasion to refer to specific portions of this evidence in the arguments to follow.

The three-judge Court considered the case for twenty-two days and issued a detailed per curiam opinion, over sixty pages in length, which was accompanied by substantial separate opinions by both Judge Justice and Judge Wood.

4. Significant findings of the Court below.

The Court below found the State Senate plan to be free from constitutional defect. The plan for the State House of Representatives was, however, found defective: The Court indicated that on one mode of computation the Board's plan provided for as much as 21.6 percent population deviation (A.Jur.S. 13A, n.5) and found a deviation of 9.9 percent according to the State's own figures; found that the State's justification of these deviations--the "necessity" to avoid crossing county lines--had been followed by the Board only

fitfully,[4] and that there was no evidence to indicate why the Board had followed this policy in some places and not in others (A.Jur.S. 16A-18A); that the State had previously announced a firm policy that there were to be no multi-member, at-large districts that encompassed more than 1,000,000 people (A.Jur.S. 20A-21A) and that the State had abandoned this policy without explanation; that the Legislative Redistricting Board's plan was not the product of legislative action but of a Board of five members, only one of whom was a member of the legislature (A.Jur.S. 19A-21A); that it cost a potential candidate for a position as representative to the State House of Representatives in Dallas County, who must seek the votes

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[4]The Board plan cuts the boundaries of 19 counties (A.Jur.S. 15A). Each of four counties--Smith, Brazoria, Hidalgo and Jefferson--is doubly dismembered, its surplus population being divided between two other districts (A.Jur.S. 16A). Appellees were therefore at first perplexed to read in Appellants' Brief statements such as "The... reapportionment...makes only one division of a small county.... (p. 6)." Apparently, however, Appellants intend the reader to understand by this language, not that only one county is divided and that a small one, but that of the many counties divided only one is small; and that the Texas Constitution, Article III, §26, lays some special emphasis on small counties. See, also, the discussion at pp. 37-39, infra.

of a constituency of 1,327,000 people,[5] in Bexar County (800,000), and in other metropolitan multi-member districts, a great deal more money to seek office than a candidate for the same position from Harris County (Houston), who must seek the votes of a constituency of approximately 75,000 people (A.Jur.S. 28A-30A); that by the only evidence before the Court there are no meaningful differences between Harris and Dallas Counties (A.Jur.S. 30A); that this difference in treatment of equal urban electorates results in a classifying of candidates and their abilities to run and form political associations according to wealth, affecting basically and unequally the poor and those not members of established political parties (A.Jur.S. 30A); that the State offered no justification for this disparate treatment (A.Jur.S. 26A-34A); that there has been a long history of racial discrimination by the State of Texas against Negroes (A.Jur. S. 38A-39A); that the multi-member apportionment scheme operates to cancel the voting strength of racial and political minorities in Dallas County, Texas, and that the political participation of Negroes

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[5]It is interesting to note, as the Court below did (A.Jur.S. 38A), that thirty United States Senators run to smaller constituencies than had to be faced by one who wished to represent Dallas County in the Texas House of Representatives under the Board's multi-member plan.

The combined Senatorial constituencies of Alaska, Nevada and Wyoming are significantly smaller than this one county-wide district. The State admits that there is no legislative district in the United States larger than Dallas County (R. 1086).

in Dallas County, Texas, had been a result of the patronage of the Dallas Committee for Responsible Government, a political organization of powerful white business leaders who designate the number of Negroes who shall seek office and who select the Negro candidates for office (A.Jur.S. 36A-41A); that the record evidences a recurring poor performance on the part of the Dallas County delegation to the Texas House of Representatives regarding Negro interests (A.Jur. S. 41A); that there has been a long history of discrimination by the State of Texas against Mexican-Americans (A.Jur. S. 45A); that the multi-member apportionment scheme opeates to cancel the voting strength of racial, ethnic, and political minorities in Bexar County, Texas (A.Jur. S. 42A-56A); that the San Antonio Republicans failed in their effort to prove an unlawful gerrymander with respect to the senatorial districts in Bexar County, Texas (A.Jur.S. 56A-58A); that the Harris County plaintiffs failed to prove that the senatorial reapportionment scheme for those senatorial districts located in Harris County was unlawfully gerrymandered (A.Jur. S. 58A-60A); that the legislature should be given another opportunity to establish a statewide reapportionment plan, but that the Board's particular multi-member apportionment schemes in Dallas and Bexar Counties contained such compelling constitutional defects as to require immediate relief (A.Jur. S. 61A-62A).

5. Progress of the appeal.

After timely notice of appeal, the State sought a stay of the judgment insofar as it reapportioned Dallas and Bexar Counties into single-member districts in parity with Harris County. This was denied by Mr. Justice Powell,

with opinion. 45 U.S. 1201 (A.Jur.S. 197H). Probable jurisdiction was noted on October 10, 1972 (App. ____).

SUMMARY OF ARGUMENT

1. The Plan attacked unconstitutionally discriminates between equals by adopting two different systems of representative government for identical urban areas, one of which favors the affluent candidate and his supporters.

The Legislative Redistricting Board has decreed single-member districts, each in the 75,000-voter range, for Harris County, (Houston) Texas, the largest urban area in Texas. For all other ubran areas it dispensed a different system of representation--at-large representatives elected from multi-member districts. The Dallas district contained 1,327,000 people and elected 18 representatives on an essentially county-wide basis. Over 830,000 people, electing 11 representatives, composed the Bexar (San Antonio) district. The Dallas district is the largest in the Country, more populous than 15 states, the Bexar district larger than 11. Such enormous districts unreasonably discriminate against the inpecunious candidate and his supporters by making low-expense campaigns impossible and by placing them at the disposal of the established and the affluent.

It was amply established, indeed undisputed in the record, that the Harris, Dallas and Bexar urban electorates are essentially identical for apportionment purposes, having no demographic or geographic distinctions of any civic significance. All contain discrete and substantial pockets of Negro and Mexican-American voters, who have a recent local history of racial and economic discrimination

imposed not only by societal but by state action, and of Republicans, the minority political party in Texas.

All governmental experts and most lay witnesses who testified agreed, as has this Court in its decisions, that the two systems have markedly different consequences and that the single-member system is the preferable model of representative government. It is clear in the record that representative responsibility, voter knowledge and even identification of candidates and representatives, representative efficiency and ability to represent the range of interests among his constituents, all decrease in a progression at least arithmetical as constituent numbers increase.

The reverse is true of the expense of getting elected, which increases to a quantum-jump at the point where bill-boards and shoe-leather are no longer practical campaigning tools. At this point, television and newspaper techniques become essential. As the record shows, these are inordinately expensive, and tyrannically so in Dallas, for peculiar local reasons. The record further shows that, in Dallas and Bexar Counties, the vastness of the electorate produced by the Board's plan destroys any hope of the non-affluent candidate and his supporters to conduct an effective campaign, placing him at the disposal of the affluent and established if he is to have any hopes of success. It further shows that this is precisely what has happened: in Dallas County, it is the DCRG which determines how many and who the Negro candidates will be; in Bexar County, the GGL performs the same office for Mexican-Americans. Without such establishment support, the record shows, it is impossible for a poor candidate to be

nominated or elected; with it he can hardly lose. And because of their submergence in the partisan sea, the Republican areas are customarily frozen out of success in county-wide elections entirely, though they repeatedly win local races run on a smaller-district basis both in Dallas and Bexar Counties. Harris County, by comparison, is accorded the benefits of a neutral and non-discriminatory system of single-member districts having electorates in the 75,000 population range, which are reachable by various campaigning methods.

Nothing inherent in the Texas situation causes these disparities; it is the Board's plan which does so.

Though neither districting method is ordinarily impermissible, on this record showing at-large districts of the size and in the circumstances presented by Dallas and Bexar are even more invidious than the Texas-size filing fees invalidated in Bullock v. Carter, 405 U.S. 134 (1972). They are constitutionally infirm for the reasons there stated, as well as on general First and Fourteenth Amendment principles of freedom of political association, due process, and equal protection. At any rate, they are plainly invalid unless shown to be reasonably necessary to some legitimate state objective, rationally pursued.

Appellants' brief does not discuss the questions raised by this point, though its argument to the trial court discussed little else. The sole justification for the Board plan advanced by the brief is the preservation of county lines, which is irrelevant to these questions. These are as well-preserved by single-member as by at-large districts within the county.

The Board members testified to no rational bases for these decisions. Two suggested local sentiment in Dallas as their guide. That local sentiment in Dallas was for at-large races is utterly refuted by the record. The record further shows that it was similarly refuted before the Board, at its meager and perfunctory hearings. The record also shows that the supposed state policy advanced to the district court and this Court in Kilgarlin v. Martin, 252 F.Supp. 404, at 444 (S.D. Tex. 1964), rev'd in part sub nom. Kilgarlin v. Hill, 386 U.S. 120 (1967), of limiting districts to 1,000,000 population, was ignored by the Board.

One Board member testified that time pressure and schedule conflicts among Board members prevented their being able to divide urban areas, another that Dallas had always been multi-member so why change it, and another that he was for single-member districts but thought a majority of the Board would vote against them so never proposed them.

These are all the reasons advanced by anyone, formally or informally, for the disparate treatment given Harris, Dallas and Bexar by the Board. There was no legitimate State policy involved, and very little policy at all. Since no justification is shown, and since the plan is seriously and invidiously discriminatory between citizens equally situated, it must fail.

2. Appellants were required to justify the admitted, significant population deviation between districts, and the arguments offered do not do so.

Appellants seek to excuse an admitted 9.9 percent maximum and an average 1.82 percent population deviation, with a deviation ratio of 1.1 to 1, among the Board's districts by arguments which are wide of the mark. Having admitted that greater population deviations than would otherwise be necessary are occasioned by the Board's supposed policy of respecting local political subdivisions, Appellants are committed to this justification and must stand or fall upon the basis of it.

The justification attempted is ingenious, but spurious. It is epitomized in the brief's triumphant assertion that the good faith effort made by the Board succeeded in reapportioning the state within tolerances "established by this Court's prior decisions, and with only one, fully-explained departure from the mandate of the state constitution" (Appellant's Brief 4), that is, "only one division of a small county," as the brief elsewhere (p. 6) makes clear is meant.

Appellants have egregiously misconstrued the mandate of the Texas Constitution, as explicated in the case on which reliance is placed, Smith v. Craddick, 471 S.W.2d 375 (Tex. 1971). Neither the constitution nor that opinion lays any special emphasis on small county integrity. It is county integrity with which the Texas Court is concerned. In addition, that Court carefully notes that the section of the Texas Constitution involved is entirely subordinate to Federal considerations: "...all requirements of Section 26 are inferior to the necessity of complying with the Equal Protection Clause." 471 S.W.2d, at 378 (emphasis added). This contention by Appellants amounts to no more than a tailoring of the Texas Constitution to Appellants' measure

and an insistance on being more constitutional than the Supreme Court of Texas.

Instead, in fact, the plan contains nineteen departures from the actual constitutional mandate--nineteen counties are divided--and four direct violations of the Texas Supreme Court's explicit warning in Craddick against fragmenting counties in more than two parts. Other glaring deficiencies, some of which are detailed in the opinion below (A.Jur.S. 13A-18A), appear in the plan, producing unnecessary deviations for reasons unrelated to preserving county lines.

Nor is there any evidence of the vaunted "good faith effort" by the Board. The House plan was, in fact, drawn by the Lt. Governor's assistant, Mr. Spellings, within about a 48-hour period, starting from scratch. He did so with only one instruction from any Board member, not to use urban single-member districts except in Harris County, and the plan which he drew was blessed by the Board the next day. And the record even contains an admission by one Board member that it was his understanding that the Board was striving, not for population equality between districts, but for deviations which did not exceed 5 percent off the average (Calvert Dep. 25). See Kirkpatrick v. Preisler, 394 U.S. 526, at 531 (1969).

3. The Three-Judge District Court did not enter an injunction having statewide impact, therefore jurisdiction in this Court is lacking.

The only injunctive relief granted by the Court below had impact on only two of the State's 254 counties. Jurisdiction in this Court under 28 U.S.C. §1253 therefore does not exist. Under such decisions of

this Court as Gunn v. University Committee to End the War, 399 U.S. 383 (1970) and Board of Regents v. New Left Educational Project, 404 U.S. 541 (1972), as well as Ruckelshaus v. Chavis, 403 U.S. 914 (1971) and Whitcomb v. Chavis, 403 U.S. 124, 138, n. 19 (1971), it is clear that it is the decree of the three-judge court (and not the pleadings before it) which determines this Court's jurisdiction. It is also clear under these authorities that only an injunction having statewide impact suffices to support jurisdiction in such a direct appeal. This injunction, though it does concern two of the State's most populous counties, clearly has no more effect on the State at large than did the order affecting the University of Texas System in New Left. The appeal should be dismissed.

ARGUMENT

1. THE ADOPTION BY THE REDISTRICTING BOARD OF ONE SYSTEM OF REPRESENTATIVE GOVERNMENT FOR HARRIS COUNTY AND A DIFFERING SYSTEM, WHICH FAVORS AFFLUENT CANDIDATES AND THEIR SUPPORTERS, FOR OTHER VIRTUALLY IDENTICAL METROPOLITAN AREAS OF THE STATE CONSTITUTES AN UNCONSTITUTIONAL DISCRIMINATION.

Equal Protection requires "...the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged." Reynolds v. Sims, 377 U.S. 533, at 565. The voters comprising the multi-member constituencies

of Dallas and Bexar Counties[6] constitute bodies standing in the same relationship to the exercise of the state's apportioning power as those of Harris County; for no or no sufficient reason, that power has dealt with the sensitive area of their franchise in a manner not only significantly different, but calculated to disadvantage further the poor, the minority, the outsider. The instance at hand is most extreme: the largest multi-member legislative district known by any participant in the proceedings to exist in this nation. We emphasize that these arguments are entirely independent of those grounded in population deviation and the other deficiencies of the Board plan, though the cumulative effect of all these deficiencies is peculiarly invidious.

A. There is no rational basis for the disparate methods of redistricting Texas urban areas.

The Dallas County district consists of more than 1,300,000 persons (A.Jur.S. 37A), and is the most densely populated area in Texas (R. 386). Its population exceeds that of fifteen states (A.Jur.S. 38A). Under the Board plan, eighteen representatives, well over one-tenth of the state lower house, were to be elected at large from this district. This was almost certainly the largest legislative district in the United States. Appellants admit (R. 1028) there was none larger. Almost one-third of the membership of the

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[6]And those of the other metropolitan, multi-member districts in Texas under the Board plan.

United States Senate runs to smaller constituencies (A.Jur.S. 38A); by the current census, United States Congressmen from Texas are elected from constitutencies roughly one-third the size of this monstrous district. Submerged within the area's population lie geographically-discrete, significant, ethnic minorities, Negroes and Mexican-Americans, and a like political one, Republicans (R. 201, 728, 229).

Likewise under the Board plan, eleven at-large House delegates were to be elected from the Bexar County district, site of the City of San Antonio. This area presents a picture differing from that just described in Dallas County in two respects only. The Bexar district's population is 830,000 plus (A.Jur.S. 48A), exceeding that of eleven states (A.Jur.S. 38A), and the Mexican-American is in a numerical plurality (A. Jur.S. 49A). However, the same minority pockets, ethnic (R. 524-7) and political (R. 983) exist.

From these two multi-member districts, then, were to come a total of twenty-nine representatives to the 150-member Texas House, almost one-fifth of its entire membership. Other multi-member districts throughout Texas, all metropolitan and none shown to differ materially from any other Texas urban area except in population, were to contribute an additional thirty-one members to the House (A.Jur.S. 119C-126C). These districts range in size from the Tarrant County (Ft. Worth) district, with its 600,000-plus population (A.Jur.S. 28A), down to Hidalgo County--sundered in three but relentlessly multi-membered as well (A.Jur.S. 125C)--with its 145,000 core district (A.Jur.S. 28A). Had Harris County, which emcompasses the

City of Houston, been similarly dealt with by the Board, its twenty-three at-large delegates, with the other multi-member district delegates, would have constituted a tidy majority of the Texas House.

But it was not. Instead Harris County, alone of all the metropolitan areas of the state, was divided into single-member districts, twenty-three of them. And this despite the fact, undisputed in this record, that the geographic and demographic characteristics of Harris County were virtually identical to those of Dallas and of Bexar Counties (A.Jur. S. 30A). No witness was able to point out any difference between their essentially similar, urban electorates; on the contrary, many testified there was no material difference (R. 233, 300, 370-1, 840).

B. The disparate redistricting methods result in improper discrimination.

At first blush it may seem that the Board's decision[7] that Dallas County and others similarly situated should be multi-member while Harris (Houston) alone should be single-member is without significant consequences to voter or candidate. After all, assuming the population arithmetic comes out satisfactorily, the voters lumped together in the multi-member pool have, collectively, the

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[7]If such it was. As we shall shortly note, the testimony of the Board members indicates that at best the "decision" was simply something that happened, the product of inattention, misapprehension, indifference and inertia.

same sort of proportionate strength in the legislature which they would have had from aggregated single-member districts comprising the same population. Moreover, it is arguable that the multi-member constituent possesses at least one and perhaps two advantages over his single-member counterpart. He clearly has a greater number of legislators both beholden and aspiring to his vote and hence presumably attentive to his views. And since multi-member districts appear inexorably to produce local political sub-parties,[8] with their sponsored slates of candidates, there may be a greater degree of cohesiveness among delegations so elected, at least among those running on the same slate. On the other hand, the single-member district clearly possesses numerous advantages, which led the governmental experts who testified (R. 228, 301-2), as well as this Court in a prior opinion,[9] to favor it as a preferable model of representative government: improved rapport between representative and constituent, resulting in better accountability to the voter and a better opportunity for the representative to know his constituents' views; a manageable range of interests to represent, as contrasted with the impossibility in a large multi-member district for the representative to represent the vast range of conflicting

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[8]Examples of such sub-parties are the Citizen's Charter Association (CCA) for city elections and the Democratic Committee for Responsible Government (DCRG) for county elections, both in Dallas County (R. 686), and the Good Government League (GGL) in Bexar County (R. 1002).

[9]Connor v. Johnson, 402 U.S. 690,. 692 (1971).

views and interests necessarily encompassed even if he could know them (R. 228, 289, 344-5); and, more practically yet, the multi-member representative's inability even to respond to the mass of communications directed to him from his aggregated constituents (R. 451, 817).

Neither method of redistricting is automatically impermissible. Indeed, this Court has consistently held that ordinarily a state may choose either of the two models of representation. E.g., Whitcomb v. Chavis, 403 U.S. 124 (1972); Burns v. Richardson, 384 U.S. 73 (1966); Fortson v. Dorsey, 379 U.S. 433 (1965). But the multi-member districts presented in this case are not ordinary. Their extraordinary size combined with the significant minority pockets dispersed throughout them render them, as the Court below found, constitutionally infirm.

In Dallas and Bexar Counties, the vastness of this amorphous electorate confronted by the potential candidate rules out all campaigning save the high-expense methods of television, radio and newspaper (R. 834, 632, 641). Dallas presents a further turn of the screw: because of its high-density population, the cost of television, calculated by reference to number of viewers, requires the candidate to pay for large amounts of useless coverage beyond the district in order to be seen within it (R. 834); the major newspaper in Dallas is in parity because of its statewide circulation, upon which its advertising rates are quite-properly calcuated (R. 836-7). Door-to-door campaigning and other methods appropriate to local, low-budget races are thus consigned by the redistricter to the rubbish heap (R. 232, 253-4, 641).

With them go all hopes of the poorly-financed candidate to campaign for nomination in the all-important Democratic primary (and of those who would vote for him of their chance to do so), as well as most hopes of the minority Republicans to achieve the name-identification in general elections needful to any reasoned hope of success (R. 823, 847, see 811-13).

And so, propelled by the heavy hand of the redistricter, the minority or inpecunious candidate who maintains despite all restrictions his desire to run, knocks on the bosses' door with hat in hand. Unable to bear the expense of his own campaign, yet still wishing a chance to win, he has no other choice (R. 789). The uncontradicted testimony of witness after witness[10] established that in Dallas County is virtually impossible, because of the county-wide district, to be nominated for the Legislature unless the candidate is acceptable to and supported by the DCRG.

Thus is is the DCRG which decides how many Negroes (R. 427) and which ones (R. 261) will be nominated by the Democratic Party in Dallas. As Mr. William H. Clark, III, a director of the DCRG, testified, for the 1972 races the DCRG had decided to pick three Negro nominees and one Mexican-American (R. 943).

And in San Antonio, it is the GGL which performs the same function as to the Mexican-

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[10] See, e.g., the testimony of the following witnesses: Weiser (R. 218-221); Mauzy (R. 341, 348); Conrad (R. 404); Holmes (R. 445); Allen (R. 695).

American, hand-picking candidates (R. 1002) without reference to the Mexican-American communities' wishes (R. 1003) and rolling over the pitiful efforts of the "Barrio" candidates (R. 629) by means of massive expenditures (R. 628-9). Two of the State's own witnesses admitted the restrictive effect on the Mexican-American franchise of the Bexar County multi-member district. Mr. Barrera, a former Secretary of State of Texas, at first testified that such districting prevented Mexican-Americans from having a full participation in Bexar County political processes (R. 558), and later backed off to the point of averring that under it they do not get as "representative a representation" (R. 584). Mr. Garza, a ten-year GGL member and City Councilman (R. 618-19), felt that the multi-member district offered the Mexican-American a full but "rather restrictive" opportunity (R. 624). As for the effect on Republicans, it was Mr. Garza's view that they were more discriminated against in San Antonio than the ethnic minorities (R. 622).

That the same observation is true in Dallas was amply born out by the testimony of Fred Agnich, founder of a major Dallas-based concern and a Republican House delegate (R. 808-830). He outlined the crushing burden imposed by the multi-member Dallas district on candidate recruitment (R. 811), occasioned by the tremendous sums required by the necessary use of television in such a district (R. 813). A serious, expert study made in 1970 by professionals indicated that, to have a chance to win, a fifteen-man Republican ticket would need $162,000 minimum to $220,000 optimum, with each candidate raising additional money for his own race (R. 814-15). Agnich himself spent $31,000 on his 1970 campaign (R. 815) which, despite

his wide and favorable community reputation (R. 809), procured him the $4,800 per year[11] office by the margin of 730 votes out of 247,000 cast (R. 816).

Such financial tyranny is beyond all reason, is the direct result of these swollen, multi-member districts, and unreasonably restricts the political participation of the poor--especially the poorest: Mexican-Americans of the "Barrio" (R. 524-525) and Negroes (R. 323).

It should be emphasized that the effect referred to is the result of the plan, and not of any factor inherent in the situation faced by the Board. It well may be, for example, that because of constitutional requirements of population parity combined with the vast and thinly-populated areas of West Texas, districts must necessarily be there created which are more expensive to campaign in than a shoe-leather, single-member district in the Houston inner city. Such situations are unavoidable in the nature of things and have no bearing on the case at bar: here we treat of matters which might and should have been otherwise but for the Board.

Finally, it was undisputed in the record that the larger the multi-member district, the more invidious is its effect (R. 303, 803), an obvious consequence of the multiplication of voters and area which forces slection of high-expense campaign techniques. As has been noted, there are none larger than the Board's Dallas mon-

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[11] plus per diem and mileage during the sessions. Tex. Const., Art. III, §24.

strosity and few than its Bexar and Tarrant County delineations.

The Board's choice of these multi-member districts thus presents yet another feature of the Texas political system calculated, like the filing fees invalidated by this Court in Bullock v. Carter, 405 U.S. 134 (1972), to fall with heavy and unequal effect on voters and candidates according to their economic status. It would be hard to find language more apposite to the case at bar than that of Chief Justice Burger speaking for a unanimous Court in that case:

> "Many potential office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be and no matter how broad or enthusiastic their popular support. The effect of this exclusionary mechanism on voters is neither incidental nor remote. Not only are voters substantially limited in their choice of candidates, but also there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community whose favorites may be unable to pay the large costs required by the Texas system. To the extent that the system requires candidates to rely on contributions from voters in order to pay the assessments, a phenomenon that can hardly be rare in light of the size of the fees, it tends to deny some voters the opportunity to vote for a candidate of their choosing; at the same time it gives the afflu-

ent the power to place on the ballot their own names or the names of persons they favor. Appellants do not dispute that this is endemic to the system. This disparity in voting power based on wealth cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause, and there are doubtless some instances of candidates representing the view of voters of modest means who are able to pay the required fee. But we would ignore reality were we not to recognize that this sytem falls with unequal weight on voters, as well as candidates, according to their economic status.

"Because the Texas filing-fee scheme has a real and appreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate, we conclude, as in Harper, that the laws must be 'closely scrutinized' and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster." 405 U.S. 134, at 143-4.

In Harris County, by contrast, twenty-three single-member districts were decreed by the Board (A.Jur.S. 127C-128C), each of approximately 75,000 persons, reachable by a variety of campaigning methods including inexpensive ones, which do not unreasonably favor the affluent candidate (R. 232).

C. No legitimate state interest supports the unequal treatment of identically situated metropolitan areas.

The serious injury that falls upon the residents of Dallas and Bexar Counties and of the other metropolitan areas of Texas because of the Board's choice of multi-member representation for them, rather than single-member representation as provided for the residents of Harris County, could possibly be justified, like any injurious unequal treatment, by some important state interest that was fostered by that choice. The record here, however, does not reveal that any state interest was fostered by the Board's choice.

The only justification proffered for the unequal treatment was that the apportionment systems employed were preferred by the residents of the areas where they were used.[12] As to Harris County this is doubtless correct; but as to Dallas County, as noted by the Court below (A.Jur.S. 31A), the suggestion is simply untrue. Numerous witnesses from Dallas testified to their preference for single-member districts (R. 333, 431-3, 692). One of the House members from Dallas, Rep. Zan Holmes, testified that as a member of the House Redistricting Committee of the last legislature he attended that committee's meetings held in Dallas and that a majority of those who appeared before it were for single-member districts (R. 436). Presentations were made before the Board itself by Dallas witnesses to like effect (R. 61, 354). And to cap all, the Board was furnished the testimony of Victor F. Robertson, Jr., a highly qualified (R. 775) public opinion and market research analyst, regarding the results of various

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[12] Martin Dep. 31, Calvert 13.

public opinion polls taken by him in the Dallas area from 1966 (R. 791) through late 1968 (R. 792) and extended to the date of his testimony (R. 792-3), for clients ranging from the AFL-CIO through the CCA and Conservative Democrats to the Republicans (R. 777). He testified before the Board and before the Court below that these showed a basic and continuing trend in Dallas of almost 3 to 1 in favor of single-member districts among those who made a choice (R. 792-3).

This powerful testimony received varying receptions from the Board members who heard it. Lt. Governor Barnes was not present, but knew of the polls from newspaper reports (Barnes Dep. 126). His only response was to note the importance to polls of how the question is asked (Barnes Dep. 126).[13] Attorney General Martin recalled the testimony regarding the poll, testified that he considered it (Martin Dep. 90-91), and further testified that he multi-membered Dallas County in a disinterested response to the wishes of the people there (Martin Dep.

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[13]Mr. Robertson's question was (R. 794):

"As you noticed, Dallas County voters will choose 15 members for the Texas House of Representatives this year. Some people think each member should be elected from his own individual district. Some think he should be elected by the whole county. In your opinion which is better, individual districts or county-wide?"

31, 63).[14] Mr. Calvert, the Comptroller of Public Accounts, testified that the wishes of the people in Dallas moved him also to multi-member it (Calvert Dep. 13), that he did not recall any testimony about a 61 percent poll favorable to single-member districts, which made very little impression on him and which he gave very little consideration (Calvert Dep. 62-63). Calvert testified as well that he paid small attention to the testimony before the Board, since there were always two sides to it (Calvert Dep. 65-66), referring to the testimony by a pejorative epithet (Calvert Dep. 66). Even if majority wishes were a justification for depriving identifiable groups of an equal opportunity to participate in the political process, it was plainly established in this case that the imaginary majority wish was at best a post hoc rationalization for the Board's choice.

A final some-time justification, offered by the state to the District Court in the 1966 case of Kilgarlin v. Martin, 252 F.Supp. 404 (S.D. Tex. 1966), rev'd in part sub nom. Kilgarlin v. Hill, 386 U.S. 120 (1967), was the supposed state policy of providing single-member districts for counties upon their attaining a population of one million or more. The state interest fostered by this policy is unclear, but it apparently has been abandoned since the Dallas County multi-member district contains more than 1.3 million people and elects so many legislators that the candidates for that office are too numerous

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[14]General Martin added that that the decision to multi-member Dallas County was not mathematical at all, but political (Martin Dep. 37).

to be listed on the standard voting machine (R. 342, 370-371).

It is inescapable on this record that no state policy was involved in the handling of Dallas County (or, apparently, any other metropolitan district), and the many and differing explanations offered for their actions by the members of the redistricting Board only emphasize this.

Board Member Armstrong believed that multi-member treatment of urban areas other than Houston was a non-decision, resulting from time pressure, schedule conflicts, and the inability of the Board to get together and do something different (Armstrong Dep. 17). Board Member Calvert gave his reasons as being the desires of the people in Dallas, already discussed, and observed that Dallas had always been multi-member, so why change it? (Calvert Dep. 69-70). Board Member Martin cited the wishes of the people as his sole reason (Martin Dep. 63). Board Member Mutscher testified that he voted against both the House and Senate plans prepared by the Board and signed neither (Mutscher Dep. 15). The Appendix to the Jurisdictional Statement is apparently erroneous in indicating (131C) that he did. And Board Member Barnes did not know when the decision was made, but insofar as he decided, did so on the basis of how he thought the other Board members would vote (Barnes Dep. 97, 98).

It is thus plain that the Board's choice of multi-member districts for Dallas and Bexar Counties and the other metropolitan areas of Texas, while the residents of Harris County enjoyed single-member districts, was not made to foster any state interest, compelling or otherwise. And that choice, because of the particular facts in Texas found

to exist by the Court below, resulted in the denial of basic First and Fourteenth Amendment rights.

2. THE VARIANCES IN POPULATION AMONG THE DISTRICTS WERE NOT JUSTIFIED BY ANY RATIONAL STATE POLICY.

This Court's many reapportionment decisions establish that the Fourteenth Amendment's requirement of equal protection of the laws imposes on the states an obligation to make a good faith effort to assure that equal numbers of people have equal representation in state legislative bodies. There is some room for slight variances, but if the apportionment of representation actually achieved results in more than minimal deviation then the state must show that some important state interest justified the inequality. See, e.g., Abate v. Mundt, 403 U.S. 182 (1971).

The Board's plan here resulted in a 9.9 percent variance between the largest and the smallest legislative districts, or approximately 7,400 people. Even when a deviation has been the result of a good faith attempt to achieve equality, this Court has never found any deviation presented to it to be per se minimal and hence to require no explanation. Nevertheless, Appellants argue that no justification is required for this deviation, and this was the entire content of their position in the Court below. Here, however, Appellants go on to argue that even if the deviation is not minimal it is justified on the ground that it was the necessary consequence of a good faith effort of the Board to preserve county lines. This effort, the argument runs, though carried through "at the admitted expense of

greater population deviations," resulted in "...a reapportionment of the state that makes only one division of a small county..." (Appellants' Brief 8, 6). And the deviation under the Board's plan was not improper since "...what variances there were [are] well within the limits established by this Court's prior decisions, and with only one fully-explained departure from the mandate of the state constitution" (Appellants' Brief 4).

1. Appellants contend that no justification is required of the deviation here because it is within the permissible limits set forth by this Court in Reynolds v. Sims, 377 U.S. 533 (1964). The Court below rejected this contention on the ground that this Court's subsequent decision in Kirkpatrick v. Preisler, 394 U.S. 526 (1969), "may substantially erode the 'tolerance' dictim in Reynolds" (A.Jur.S. 12A). Appellants' position basically is that Kirkpatrick has no application to Texas legislative districts, since that case involved and is limited to congressional redistricting.

Appellants are right to attack the Kirkpatrick rule for if it applies there is an end of the matter. This Court stated there that "the State must make a good-faith effort to achieve precise mathematical equality.... Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small" (394 U.S. at 530-531). There is no "mathematical equality" under the plan devised here. It contains a 9.9 percent maximum deviation, a deviation ratio of 1.1 to 1, and an average deviation of 1.82 percent, all by the State's own calculations (Appellants' Brief 11). Appellants did not attempt

to justify these except by general reference to the State Constitution's "prohibition" against cutting county lines, an argument spurious in several respects as we shall deomonstrate shortly. Thus if Kirkpatrick has application, Appellants cannot prevail.

Nor do Appellants fare any better if Kirkpatrick does not apply. This record reveals a melding of (1) enormous, multi-member districts, unequally imposed on equivalent voters, undisputedly having the effect of favoring the affluent candidate and his supporters at the expense of the less affluent, and (2) unjustified population deviations of almost 10 percent.[15] As such, it is like neither Abate nor Whitcomb v. Chavis, and is different from any prior case decided by this Court except, in some respects, Bullock v. Carter, supra. But it combines the worst features of the plans presented in all those cases, and adds other bad ones. The combined effect is to render the plan here constitutionally infirm even under the principles of Reynolds v. Sims.

2. Appellants' claim that the Board made a good faith effort to achieve popula-

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[15]The Board's plan has other graceless features as well. For example, the State's own witness, Representative Paul Silber of Bexar County, admitted that Senate District 21, which combines the Republican area of San Antonio with 11 or more Border and South Texas Counties, was "an outright political gerrymander" (R. 984).

tion equality is not borne out by the record. We have already shown how the Board went at its task.

It commenced by refusing to act at all to redistrict the House, proceeding only when directly ordered to do so by the Supreme Court of Texas. With twenty-six days left, it still dallied until it had to do what Lt. Governor Barnes called a 10-day job (Barnes Dep. 149). One of its members testified that because of the "peculiar situation" in which the Speaker of the House found himself, he did not really participate in its counsels and it was actually a four-man board (Calvert Dep. 40). The same member approved the plan under the mistaken impression that it provided multi-member Senatorial Districts for Dallas County, and was still not sure at his deposition whether it did or not (Calvert Dep. 47-8). Another testified that so far as he knew, the Board gave the staff members who drew the plan no instructions about how to do it (Armstrong Dep. 20). And finally, one member testified that the House and Senate plans were both put together by Lt. Governor Barnes and two of his assistants, a Mr. Spellings and an aide of his (Mutscher Dep. 24).

Mr. Spellings amply confirmed this and, indeed, narrowed the matter even further. He testified that he drew the plans (Spellings Dep. 15-16) at Barnes' direction and with only one instruction from Barnes, which was not to use single-member districts except in Harris County (Spellings Dep. 9-10, 34-35). He talked about the House plan with only one other Board member, but did not ask his opinion because he knew it already (id. at 35), and in fact disregarded it in preparing the plan (id. at 19). Most of the Senate plan was

his (id. at 56-57); he drew a plan he thought the Board would accept, but not under its dictation (id. at 62). He did the drawing and made the basic decisions (id. at 159), and the Board knew this (id. at 161). He drew the entire House plan between a Tuesday afternoon at 5:00 p.m. and early in the afternoon on the succeeding Thursday, starting from scratch (id. at 29). The plan which he drew was adopted the next day by the Board (id. at 17-18). And he did all this with no prior redistricting experience, except in the last 24 hours of the prior legislative session (id. at 115). All this is undisputed, and makes clear that the final result was not the Legislature's plan, or even the Board's plan--it was Mr. Spellings' plan.

Moreover, the record contains a tantalizing clue that this Court's expressed fear in Kirkpatrick, that "...to consider a certain range of variances de minimis would encourage legislators to strive for that range rather than for equality..." (394 U.S. at 531), has here been realized. Attorney General Martin testified that his instructions and advice were, in the Kirkpatrick vein, to keep percentage deviations to zero if possible (Martin Dep. 35). Board Member Calvert, however, a non-lawyer who looked to Martin for legal advice (Calvert Dep. 17-18), somehow got a different message: that population variations between districts were not to exceed 5 percent off the average (id. at 25). So viewed, the resulting maximum deviation of 9.9 percent between districts in the Board plan, as computed by the State (Appellants' Brief 11), was either a success although a very near run thing or a stunning coincidence.

3. The basic justification advanced for the population disparities is that the Board sought to maintain county lines "...at the admitted expense of greater disparities in population deviation..." (Appellants' Brief 8).[16] The general argument is a rather standard after-the-fact treatment of the variances. But its "small county" phase is imaginative and ingenious.

Appellants assert that the Board "...adopted a plan with the lowest population variances available to it, with what variances there were within the limits established by this Court's prior decisions, and with only one, fully-explained departure from the mandate of the state constitution...." (id. at 3-4). And they claim that the Board "...attempted to satisfy both federal and state constitutions. The result is a reapportionment of the state that makes only one division of a small county in contravention of Article III, Section 26, of the state constitution, yet keeps all districts within a maximum variation ranging from a low of 4.1 percent under the optimum to a high of 5.8 percent over the optimum" (Appellants' Brief 6).

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[16]Mr. Spellings, who as discussed above devised and drew the plan, did not recall "preserving county lines" when asked about his guidelines, though he named others (Spellings Dep. 76). In fairness, Mr. Spellings must have paid some attention to county lines, at least as a convenience, since he did preserve a great number of them.

Considering that the plan cuts the boundaries of 19 counties, and literally explodes four of them into three pieces each,[17] these statements in Apellants' Brief are confusing. We believe that they indicate that Appellants have constructed an argument of some cleverness by reasoning backward in this manner from the facts. Red River County is the smallest of the counties which is divided, and is also the only county divided the division of which can rationally be justified. On these facts, Appellants belatedly conclude that it was the Board's rational policy not to divide small counties, and that its plan succeeds brilliantly in this regard because only one small county is divided and that unavoidably. And Appellants now discern that what the Texas Constitution, Art. III, §26, as explicated by the Texas Supreme Court in Smith v. Craddick, supra, forbids--or especially forbids--is dividing small (or perhaps rural, Appellants' Brief 6) counties. Thus, by construing the Texas Constitution to forbid the division of small counties, rather than counties generally, Appellants are able to tailor their argument to fit the record, to claim that the "one departure" from the mandate of the state constitution is fully justified, and to make the laudatory statements quoted regarding the Board plan.

The argument fails for various reasons. In the first place, neither Article III, §26, nor the Texas Court's opinion in Smith v. Craddick lays any special emphasis on small or rural counties. It was "...the wholesale cutting of county lines...." and the fact that "...[a]lthough Grayson County has a popula-

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[17]Opinion below, A.Jur.S. 15A, 16A; see also 133C.

tion of 83,225, that county was not apportioned a representative as required by Section 26...." which brought down the legislature's House redistricting plan in Craddick (471 S.W.2d at 378; first emphasis supplied).[18] In the second place, any such discrimination in favor of citizens residing in small or rural counties would itself be of very dubious constitutionality.

The "small county" argument simply does not bear examination. Nor does the general "county lines" argument, in the face of the cutting of 19 counties of which four were not cut but fragmented, in exquisite disregard of the Texas Supreme Court's direct admonition in Craddick. The Court below catalogues numerous additional aberrations (A.Jur.S. 16A-18A).

The population deviations of the Board plan were not minimal, were not justified, and were not the result of a good faith effort. Hence, under both Kirkpatrick and the broader net of general constitutional principles, some of which were explicated in Bullock v. Carter, the plan is constitutionally defective.

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[18]The State's argument in Craddick was apparently the reverse of that presented here: that minimizing population variances justified wholesale cutting of county lines. The invalidated plan divided 18 counties with populations below 74,645 and 15 with populations above it. There were only twenty counties larger than Grayson County. 1972-73 Texas Almanac 157-160.

3. THE COURT DOES NOT HAVE JURISDICTION OF THIS APPEAL UNDER 28 U.S.C. §1253.

The consolidated three-judge Court constituted by Chief Judge Brown was asked to enjoin the Texas reapportionment statutes for both the State Senate and the State House. That Court did not grant the plaintiffs such relief. In fact the Court held that the Senate statute was without defect and refused to interfere with the application of the House statute except in two instances. The order of the Court below from which the State appeals consisted of six parts, only the first four of which are of present concern:[19]

1. An order that unless the Legislature of the State of Texas on or before July 1, 1973, has adopted a plan to reapportion the legislative districts within the State in accordance with the constitutional guidelines set out in the District Court's opinion, the District Court will enter its own plan;

2. An order that Dallas and Bexar Counties be reapportioned into single-member representative districts in conformance with the exhibits attached to the District Court's opinion;

3. An order allowing candidates for the legislature in Bexar and Dallas Counties to run for office without regard to where they live within those counties;

4. An order directing the Secretary of State of the State of Texas to take the nec-

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[19]The other two parts of the Court's order denied relief to those plaintiffs below who were challenging the Senatorial scheme.

essary steps to implement the Court's order (A.Jur.S. 63A-64A).

The District Court thus granted declaratory relief as to the whole State, but entered an injunction affecting only two of its 254 counties. Under this Court's decision in Gunn v. University Committee to End the War, 399 U.S. 383 (1970) and Board of Regents v. New Left Educational Project, 404 U.S. 541 (1972), 28 U.S.C. §1253 does not support the State's claim that this Court has jurisdiction. And since no appeal has been filed in the United States Court of Appeals for the Fifth Circuit, this Court has no jurisdiction under 28 U.S.C. §2101(c). Gay v. Ruff, 292 U.S. 25, 30 (1934).

In Gunn, this Court held that it was without jurisdiction to review an order of a three-judge District Court that entered an order declaring a Texas statute unconstitutional but withholding injunctive relief until after the next session of the legislature met. Since the plaintiffs in Gunn had prayed for injunctive relief it is beyond question that the three-judge Court was properly constituted under 28 U.S.C. §2281. Thus in Gunn the Court established the proposition that even though the pleadings properly support the jurisdiction of the three-judge Court, this Court's jurisdiction is determined by the order of the three-judge Court and not by the pleadings in the three-judge Court.

An order such as the Court below entered regarding statewide reapportionment will not support the jurisdiction of the Supreme Court. Ruckelshaus v. Chavis, 403 U.S. 914 (1971) and Whitcomb v. Chavis, 403 U.S. 124, 138, n. 19 (1971). In those cases the Court

dealt with an order of the United States District Court for the Southern District of Indiana that declared a state legislative apportionment scheme invalid, but which stayed injunctive relief until October 1, 1969, a date after the next session of the Indiana State Legislature met. See Chavis v. Whitcomb, 305 F.Supp. 1364 (S.D. Ind. 1969). This Court held, in reliance on Gunn, that there would be no appeal to this Court from such an order since it was not an injunction. And the principle announced in Gunn has been followed consistently by this Court in other cases as well. See, e.g., Dial v. Fontaine, 399 U.S. 521 (1970), Hutcherson v. Lehtin, 399 U.S. 522 (1970); McCann v. Babbitz, 400 U.S. 1 (1970; Smith v. Garza, 401 U.S. 1006 (1971); and Unborn Child v. Doe, 402 U.S. 936 (1971). See also Perez v. Ledesma, 401 U.S. 82 (1971). Similarly, part 1 of the District Court's order here is not an injunction and hence will not support the jurisdiction of this Court.

Nor can this Court's jurisdiction be supported by any of the other parts of the District Court's order since what we have called parts 2, 3, and 4 relate only to 2 counties in the State, Dallas and Bexar. In Moody v. Flowers, 387 U.S. 97 (1967), the Court held that this Court had no jurisdiction to review an order of a three-judge District Court dismissing a complaint in which the plaintiffs sought to enjoin the enforcement of an Alabama statute prescribing the apportionment and districting scheme for electing members of a local governing authority, the Houston County Board of Revenue and Control, on the ground that the statute did not have statewide application. The holding in Moody

was expanded in Board of Regents v. New Left Education, supra, where the Court held that a Rule of the Board of Regents of the University of Texas System, which applied to three major campuses at Austin, Arlington, and El Paso and to several smaller campuses, did not have statewide impact. In New Left, the Court overruled Alabama State Teachers Assn. v. Alabama Public School and College Authority, 393 U.S. 400 (1969) (see Harlan, J. dissenting) and again emphasized that the three-judge-court statutes are to be strictly construed. In the opinion for the Court in New Left, Mr. Justice White said that the rule requiring statewide impact achieves "the congressional purpose of saving statewide regulatory legislation from invalidation through ordinary federal court equity suits, minimize[s] the burden which the three-judge court places upon the federal judiciary and avoid[s] unduly expanding the Court's carefully limited appellate jurisdiction."

That this Court has no jurisdiction when the order of the District Court has only local impact was reaffirmed in Skolnick v. Board of Commissioners, 389 U.S. 26 (1967). In that case an appeal was taken from an order by a three-judge court denying an injunction of that portion of a statewide judicial apportionment that affected Cook County, Illinois. See Skolnick v. Kerner, 260 F.Supp. 318 (N.D. Ill. 1966). The claim in the lower court was that the scheme debased the votes of racial and religious minorities in Cook County. The three-judge court denied relief; on appeal this Court vacated and remanded the order of the lower court, citing Moody v. Flowers.

This Court thus has announced three principles that control its jurisdiction

under 28 U.S.C. §1253: (1) the jurisdiction of the Supreme Court is determined by the decree of the three-judge court; (2) the only order appealable directly to the Supreme Court is one granting or denying an injunction; and (3) the injunction entered by the three-judge court must have statewide impact. Here the only injunction of the District Court has an impact solely in Dallas and Bexar Counties. There is no contention that the ordering of reapportionment in those two counties in any way affects the State's reapportionment scheme in any other part of the state--not even in those counties that adjoin Dallas and Bexar Counties. Moreover, the order of the Court below affects only 29 out of 150 seats in the Texas House of Representatives. And although Dallas and Bexar Counties are two of the most populous counties in the State, they are no more central to the State's legislative scheme than the University of Texas System was to the State's entire higher education program in New Left. And while it might be argued that part 4 of the District Court's order, which directed the Secretary of State to take the necessary steps to implement the Court's order, provides a basis for this Court's jurisdiction, the only steps required also relate solely to Dallas and Bexar Counties. Since under the most recent opinions from this Court, jurisdiction of this Court is determined by the decree of the three-judge court and since here there is no injunction that has statewide impact, we submit that the appeal here is not within this Court's jurisdiction and therefore should be dismissed.

Finally, it is significant that the only operative portion of the decision of the Court below affects just two counties,

Dallas and Bexar, both of which were subjected to glaring constitutional impositions under the Board plan. The Texas Legislature is presently in session. By the time the opinion of this Court is handed down, in all probability either it or the district court will have handed down a plenary reapportionment plan for the State. As to Dallas and Bexar Counties, the action of the district court was beyond peradventure correct, and at all events has been effectuated since primary and general elections have already been completed under the Court's order.

CONCLUSION

For the foregoing reasons, the State's appeal should be dismissed for want of jurisdiction or, in the alternative, the judgment of the district court should be affirmed.

Respectfully submitted,

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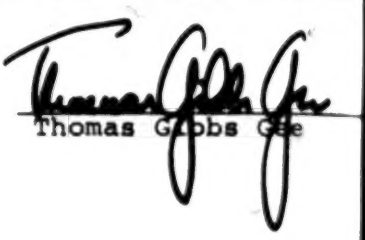
PROOF OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that a copy of the foregoing Brief of Appellees has this the 9th day of February, 1973, been served upon each counsel of record for appellants in accordance with Rule 33 of this Court, by depositing the same in a United States mail box with first class postage prepaid, addressed to said counsel at their post office address



Thomas Gibbs Gee

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-147

BOB BULLOCK, ET AL.,

Appellants,

v.

DIANA REGESTER, ET AL.,

Appellees.

On Appeal from the United States District Court
for the Western District of Texas

BRIEF OF APPELLEES
(Joe Bernal, et al.)

STATEMENT OF THE CASE

Preface

Appellants in their brief categorize this case as "the fourth round in the judicial forum of the decade-old and seemingly unending political struggle between the State of Texas and *certain of its political groups . . .*" Brief for Appellants at 3 (emphasis added). This categorization arrogates some type of sacrosanct status to the State, some type of immutable infallibility akin to the ancient doctrine of divine right.

Joe Bernal, et al, Intervenors below and Appellees

herein, represent the Mexican-American[1] population in Texas which constitutes 20% of the State's population. They are the people of Texas—or at least a very substantial portion thereof. As a nationality or ethnic minority, they have suffered long from invidious discrimination in many facets of life and are in this case seeking the application to their situation of the equal protection guarantees of the Constitution of the United States.

The trial court most aptly summed up the present status of Mexican-Americans by stating in its opinion:

> Because of long-standing educational, social, legal, economic, political and other widespread and prevalent restrictions, customs, traditions, biases and prejudices, some of a so-called *de jure* and some of a so-called *de facto* character, the Mexican-American population of Texas, which amounts to about 20%, has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others. (A.Jur.S. 45A.)[2]

This is not to say that the Joe Bernal Appellees are not aware that the case also involves the Negro population of Texas and its desire for equal protection together with other elements of the population, including the Republican Party of Texas.

With this preface, Appellees now will set forth, as a help to this Court, the historical antecedents of this lawsuit.

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[1]In its opinion the trial court used the terms "Mexican-American" and "Chicano" interchangeably. The term "Chicano" is a shortened version or corruption of the term "Mexicano" which has often been applied to the Mexican-American in the Southwest. The term "Anglo" is generally used in the Southwest to distinguish other Caucasians from Mexican-Americans.

[2]The abbreviation "A.Jur.S." refers to the blue, separately bound Appendix to the Appellants' Jurisdictional Statement.

Historical Antecedents

A. *Article III, Section 28, Texas Constitution*

Although the Texas Constitution of 1876 required the Texas legislature to reapportion[3] after each decennial census, as of 1948 the legislature had failed since 1931 to discharge this constitutional duty. Hence, Section 28 of Article III was amended in 1948 by the people to provide that if the legislature failed to reapportion then the Legislative Redistricting Board of Texas[4] was to do so. Further, the amendment gave the Texas Supreme Court jurisdiction to mandamus the Board to perform its duty.[5]

B. *Kilgarlin v. Martin*

Kilgarlin v. Martin, 252 F.Supp. 404 (1966), *rev'd. in part, sub nom., Kilgarlin v. Hill*, 386 U.S. 120 (1967), is the next link, the *Baker v. Carr* of Texas. It resulted in an apportionment of the Texas legislature which did away with flotorial districts. It continued the use of multi-member districts for all metropolitan areas except Harris County which takes in the City of Houston and had more than one million population. To account for this distinction between the major metropolitan areas of Texas, the State explained to the federal court that in the future any county which at-

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[3]The terms "apportionment," "reapportionment," "districting" or "redistricting" are used interchangeably to refer to the overall process of dividing the State into legislative districts.

[4]This body is hereafter referred to as the "Board" and is composed of five state officials—the Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office. The amendment provides the board must assemble within 90 days after the legislature adjourns and must complete its work within 60 days thereafter.

[5]See A.Jur.S. 177E for Interpretative Commentary to Article III, Section 28, Vernon's Texas Constitution.

tained one million population or merited fifteen representatives would be subdivided into less than county wide districts. *Kilgarlin v. Martin*, 252 F.Supp. 404 at 444.

C. *The 62nd Texas Legislature*

Shortly before the May 31, 1971 adjournment of its regular session, the 62nd Texas Legislature passed a reapportionment plan for the Texas House of Representatives.[6] It cut the boundaries of 33 counties, and 43 districts contained portions of one or more counties. Eighteen counties which were too small to merit a separate representative were cut and portions of each of these counties were placed in two or more districts.

D. *Smith v. Craddick*

Immediately after passage of this House reapportionment plan, an attack was mounted on it by Republican plaintiffs in a Texas state district court. Plaintiffs claimed, and the court found on August 10, 1971, that the plan violated Article III, Section 26 of the Texas Constitution which prohibits the unnecessary cutting of county lines. (A.Jur.S. 174E - 175E.) Through a series of expedited procedures, the matter was submitted and decided by the Texas Supreme Court on September 16, 1971. (A.Jur.S. 178F.) That court held that while population is the key to apportionment, the effect of Article III, Section 26 is not completely negated and that the clear intent of that section was to provide representation apportioned on the basis of the county unit. Counties were to be combined and split only when necessary to achieve population equality. The Texas Supreme Court also held that, though the burden was on those attacking an apportionment, when it is demonstrated that a statute fails

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[6]This body is hereafter referred to as the "House."

to do what is required by the Constitution, the burden shifts to the State. The court found that since the State offered no evidence "to establish that the wholesale cutting of county lines, as provided in House Bill 783, was either required or justified to comply with the one-man, one-vote decisions," the Texas Constitution had been violated, and it declared the apportionment invalid in its entirety. (A.Jur.S. 184F.)[7]

E. *Mauzy v. The Legislative Redistricting Board*

The Board held its first meeting on August 10, 1971. It announced an intent to reapportion the Texas Senate because the legislature had failed to do so. However, on a vote of 4-1, it refused a petition to reapportion the House. It took the position that its power to reapportion existed only if the legislature did not act. Thus, if a reapportionment was passed, albeit an unconstitutional one, the Board had no power to act.

Since only a matter of days remained within which the Board could reapportion the Texas House, action was begun under the original jurisdiction of the Texas Supreme Court to mandamus the Board. On September 27, 1971, that court issued its mandamus to the Board holding:

> An apportionment which is invalid, for whatever reason, is no apportionment; and the Board's duty to proceed with apportioning the State into representative districts accrued when the regular session adjourned on May 31, 1971, without having enacted a valid apportionment statute. *Mauzy v. The Legislative Redistricting Board*, (A.Jur.S. 186F-192F.)

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[7]For an interesting commentary by a well-known Texas political analyst on this plan see BANKS, MONEY, MARBLES AND CHALK, pp. 240-242 (1971). Library of Congress Catalogue Card No. 70-180195.

In a discussion of the logistics of apportionment, the Texas Supreme Court cautioned the Board that attention must be paid to the discriminatory effect a multi-member district plan might have on the State's political or racial elements. The court said that:

> In exercising its discretion as to whether to create multi-member districts within a single county, we must assume that the Board will give careful consideration to the question of whether or not the creation of any particular multi-member district would result in discrimination by minimizing the voting strength of any political or racial elements of the voting population. See *Whitcomb v. Chavis*, 403 U.S. 124, 91 S. Ct. 1858, at 1869, 29 L. Ed. 2d 363 (1971). (A.Jur.S. 193F-194F.)

F. *Proceedings of the Board*

When the Board held its first meeting to deal with House reapportionment, twenty-three days remained for it to act. At this first meeting, the Board elected Attorney General Crawford Martin as its chairman (Martin Dep. at 8, ll. 8-10), thus making him its legal advisor and executive officer. (Martin Dep. at 20, ll. 4-5.)

The Board held two public hearings on House redistricting. (Martin Dep. at 10, ll. 8-10.) The only issue discussed at these hearings was whether Harris, Dallas, and Bexar Counties should have multi-member districts.

The Board made no use of the plan adopted by the legislature and declared void in *Smith v. Craddick* (A.Jur.S. 178F-185F); nor of the legislative hearings which formed its basis; rather, it was treated as a "nullity." (Martin Dep. at 22, ll. 17-25; 23; 24, ll. 1-3.) The plan eventually adopted by the Board was started from "scratch." (Spellings Dep. at 25, ll.

21-25.) Except for private discussions from time to time between two or three of them, no other specific consideration was given by Board members to the task at hand. (Martin Dep. at 18, ll. 1-25; Calvert Dep. at 8, ll. 21-22; Armstrong Dep. at 7, ll. 14-24.) At no time did the Board put the question concerning the use of multi-member districts to a vote. (Martin Dep. at 45, ll. 19-23; Calvert Dep. at 61, ll. 1-6; Barnes Dep. at 97, ll. 12-25; 98, ll. 1-15.) This even though there was no unanimity of opinion since Lieutenant Governor Barnes (Barnes Dep. at 62, ll. 8-12) and Land Commissioner Armstrong (Armstrong Dep. at 23, 11. 19-20) both were publicly committed to single-member districts (Barnes Dep. at 98, ll. 16-25) while Comptroller Calvert (Calvert Dep. at 48, ll. 2-21) appeared committed to multi-member districts and Speaker Mutscher (Mutscher Dep. at 53, ll. 4-20) and Attorney General Martin were on the fence. Martin testified that he did not make up his mind on the multi-member district question until the plan adopted by the Board was presented to him by Spellings. (Martin Dep. at 30, ll. 16-25; 31, ll. 1-14.)

The Board gave little consideration to the cost of running for election in large multi-member districts; (Calvert Dep. at 55, ll. 8-19) or to the problems concerning community of interest which are presented by a multi-member district. (Calvert Dep. at 26, ll. 24-25; 27, ll. 1-7.) Nor did the Board give "careful consideration" to the effect of multi-member districts on racial or political minorities as they had been directed to do by the Texas Supreme Court in *Mauzy*. (A.Jur.S. 193F-194F; Calvert Dep. at 22, ll. 15-25; 23, ll. 1-7.)

Although three of the Board members (Barnes, Martin and Calvert) were defendants in *Kilgarlin v. Martin*, 252 F.Supp. 404 (S.D. Tex. 1966) when the State enunciated its policy of not using large multi-

member districts in a county that surpassed one million population or which was entitled to fifteen or more representatives, this policy was not applied by the Board. (Barnes Dep. at 136, ll. 1-19.)

The actual drafting of the plan adopted by the Board was done by Robert Spellings, administrative aide to Lieutenant Governor Barnes, but no instructions or guidelines were given to him by the Board as to how the plan was to be drawn. (Martin Dep. at 34, ll. 21-25; 35, ll. 1-20; Calvert Dep. at 61, ll. 1-6; Armstrong Dep. at 20, 21; Barnes Dep. at 115, ll. 15-19.) The Board just took it for granted that whatever was done would be constitutional. Commissioner Armstrong testified:

> A. I think it was the presumption of the Board that it would be done in a manner which is constitutional. I don't think anyone felt compelled to instruct; I just think that they felt like if we did it, it had to be constitutional—at least that was my feeling.
>
> Q. So actually you all just assumed that the staff would do its job and follow constitutional guidelines but you made no special effort to be sure that the staff would do that, as best you can reconstruct this thing.
>
> A. I would say that was a fair statement and a valid assumption. (Armstrong Dep. at 22, ll. 10-15; 23, ll. 8-14.)

In addition, there were no directions from the Board given to Spellings concerning whether to use single or multi-member districts for the major metropolitan areas other than Harris County. The inference from the record is that he was left to his own discretion on how to handle this important policy issue. The Board ultimately and routinely ratified the one and only plan which he submitted to them.

G. *Proceedings in this Action*

This action was one of four consolidated for trial before a three-judge federal district court. The court decided the case on January 28, 1972. It set aside as unconstitutional the entire House reapportionment plan adopted by the Board on the ground that no rational state policy was shown to justify population deviations from the one man, one vote principle. It also held that the multi-member districts in Dallas and Bexar Counties diluted or cancelled the voting strength of Negroes in Dallas County and of Mexican-Americans in Bexar County. It implemented court-approved single-member districts for those two counties and suspended statutory requirements for elections held in 1972 that require residence in a legislative district. It retained jurisdiction for purpose of implementing a court-approved House reapportionment plan in the event the 63rd Texas Legislature failed to reapportion before July 1, 1973. A stay of the trial court order sought by the State was denied with opinion by Justice Powell on February 7, 1972, 405 U.S. 1201, and elections under the court-ordered single-member districts were held in 1972 in Dallas and Bexar Counties.

SUMMARY OF ARGUMENT

The fundamental principle of equal protection requires the uniform treatment of persons standing in similar circumstances, *Reynolds v. Sims*, 377 U.S. 533 (1964). Since any restriction on the right to vote affects a "fundamental right," a State must have a "compelling state interest" to justify it, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966), and such restriction must be uniformly applied. Any deviation therefrom must be thoroughly documented and applied throughout the state "in a systematic and not an *ad hoc* manner," *Kirkpatrick v. Preisler*, 394 U.S.

526 (1969).

The plan of apportionment invalidated by the three judge district court provided single-member districts for the election of members of the Texas House of Representatives from Harris (Houston) but not from Dallas, Bexar or any of the other large metropolitan counties in Texas. This unequal treatment is suspect since in *Kilgarlin v. Martin*, 252 F.Supp. 404 (1966), the State explained to the federal courts a similar distinction between Harris and Dallas Counties by reference to a state policy which provided that when a county reached one million population or merited fifteen or more representatives then it would no longer be treated as one large multi-member district. While in 1966 Dallas was somewhat short of a million population, according to 1970 census figures its population is now more than 1.3 million, and it merits 18 representatives. In the plan in question, the State, without explanation, abandoned this formerly enunciated official policy. This belies the fact that the State had a rational policy, let alone a compelling interest, to distinguish between any of the major metropolitan areas in Texas.

The plan declared invalid by the trial court also cut the boundaries of nineteen counties in violation of Article III, Section 26 of the Texas Constitution. The State explained that in some instances county lines had to be cut to give effect to the Equal Protection Clause of the United States Constitution. However, these counties were cut in irrational, inconsistent and sometimes totally unnecessary manners and, as the trial court found, the State attempted to explain only one of these instances. Eight of the counties cut involved multi-member districts with only three such districts remaining as entire counties. In four instances parts of one county were divided between more than two legislative districts. Bexar County, in particular, was split without

necessity and a portion was attached to a rural district which resulted in raising the average deviation in the plan.

When the circumstances of specific cases demonstrate that multi-member districts "operate to cancel out the voting strength of racial or political elements of the voting population," they will be found unconstitutional. *Whitcomb v. Chavis*, 403 U.S. 124 (1971). This "tendency" in multi-member districts to so affect minority voters is especially pronounced in "large" districts which elect a "substantial proportion of either house of a bicameral legislature" and where there is no requirement that the candidates run from "particular sub-districts." *Whitcomb*, 403 U.S. 124 (1971).

The Texas Legislative Redistricting Board was mandamused by the Texas Supreme Court to redistrict for House purposes. In so doing, the Court warned that "careful consideration" should be given to the effect of the use of multi-member districts on the "political or racial elements of the voting population." *Mauzy v. Legislative Redistricting Bd.* (A.Jur.S. 193F-194F).

The Board ignored the red flag waved before it by the Texas Supreme Court and gave no consideration to such effect. The trial court found that Mexican-Americans in Bexar County and Negroes in Dallas County historically had been and continue to be disadvantaged by a concomittance of racism, poverty and discrimination. These circumstances, coupled with the use of a majority place system in the Texas electoral scheme, in contrast to the plurality system used in Indiana, compelled the trial court to find and conclude that the use of large, multi-member legislative districts in the plan in question diluted and cancelled out the voting strength of the Negro and Mexican-American miorities in Dallas and Bexar Counties. *Whitcomb v.*

Chavis, 403 U.S. 124 (1971); *Sims v. Amos*, 336 F. Supp. 924 (M.D. Ala. 1972); *Taylor v. McKeithen*, 407 U.S. 191 (1972).

The plan contains at least a 9.9% top to bottom population deviation. This deviation is not the result of a good faith effort to obtain population equality. The State attempts to avoid the requirement of equal protection by arguing that this Court should adopt 9.9% as a "*de minimus*" deviation.

Any specific definition of "*de minimus*" deviation would result in a redistricting authority aiming at "*de minimus*" rather than "absolute population equality." *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969); *Reynolds v. Sims*, 377 U.S. 533 (1964).

In any case, Appellees contend that actually the total deviation in the State's plan is correctly computed to be at 29.3% instead of 9.9%. The 9.9% deviation, as noted by the trial court, results from the State's method of working out a deviation in its large multi-member districts corresponding to the method of handling flotorial districts invalidated in *Kilgarlin v. Martin* 252 F.Supp. 404 (1966) (A.Jur.S. 13A n. 5). The 29.3% total deviation, as correctly computed, is an impermissibly large deviation and is clearly unconstitutional.

ARGUMENT

I.

THE BOARD PLAN IS NOT BASED ON A RATIONAL, CONSISTENT STATE POLICY THAT EXPLAINS THE DISPARATE TREATMENT ACCORDED MAJOR METROPOLITAN AREAS, THE IRRATIONAL AND INCONSISTENT TREATMENT OF OTHER AREAS AND THE DEVIATIONS FROM ONE MAN, ONE VOTE.

A. *Board Fails To Set A Rational Policy*

When the Texas legislature in 1971 ignored its constitutional duty by failing to redistrict the Texas Senate and by adopting an unconstitutional House redistricting plan, the redistricting task fell upon the Board. (A.Jur.S. 9A.) After its initial refusal to reapportion the House was cured by mandamus from the Texas Supreme Court, the Board had twenty-three days in which to act.

The Board, for whatever reason, abdicated its responsibility of drafting a House redistricting plan to Robert Spellings, administrative assistant to Lieutenant Governor Ben Barnes, who testified by deposition that with guidance from Barnes he drafted the House plan *in toto* in less than one day. (Spellings Dep. at 26, ll. 5-21.)

The Board held only two public sessions to consider House redistricting. Barnes was absent from one meeting and House Speaker Gus Mutscher arrived very late for the other. (Calvert Dep. at 15, ll. 16-23.) The Board never made policy decisions or furnished Spellings with guidelines which he was to follow. He was merely instructed to "draw a constitutional plan." Most important is the fact that the depositions of the five members of the Board show that they totally failed to determine, policywise, to what extent multi-member House districts were to be employed in the larger counties even though the Texas Supreme Court in *Mauzy v. Legislative Redistricting Bd.* (A.Jur.S. 186F-194F) expressly admonished that:

> In exercising its discretion as to whether to create multi-member districts within a single county, we must assume that the Board will give careful consideration to the question of whether or not the creation of any particular multi-member district would result in discrimination by minimizing the

voting strength of any political or racial elements of the voting population. (A.Jur.S. 193F-194F.)

The trial court, on this point, concluded:

> As an example of what we must conclude to be considerable lack of rational direction, at no point in its deliberations did the Board ever debate or discuss the general issue of single-member districts, obviously a very important issue in any apportionment plan, and particularly in the Texas proposal. (A.Jur.S. 20A.)

Even the most perfunctory reading of the record indicates that the Board was hardly involved in the reapportionment. It held two public hearings on short notice. But there was no relationship between these hearings and the plan actually adopted. For example, Attorney General Crawford Martin, who was the swing man on the multi-member district question, testified that his decision to support the use of multi-member districts was not made until Spellings presented him with the plan. (Martin Dep. at 30, l. 25; 31, ll. 1-14.) In other words, the plan which was adopted by the Board was already in existence before Martin made up his mind.

What happened was that at the eleventh hour Spellings presented the Board with only one plan. It included multi-member districts for all of the major metropolitan areas except Harris County which was broken into single-member districts. Due to the time element, the Board had no choice but to accept the plan or be in contempt of the mandamus of the Texas Supreme Court. Thus, the basic issue involving use of multi-member districts was really determined by Spellings.

In the light of this behavior of the Board, it is not surprising that the trial court stated:

> We have serious doubts whether this Board did

the sort of deliberative job contemplated by *Reynolds* as worthy of judicial abstinence. (A.Jur.S. 21A.)

The Board not only failed to set a rational policy for the use of multi-member districts, but it, whether by design or otherwise, abandoned without explanation the only policy advanced as rational by the State in prior litigation. In this connection, after noting that two[6] of the Board members were defendants in *Kilgarlin v. Martin*, 252 F.Supp. 404 (1966), *rev'd. in part, sub nom., Kilgarlin v. Hill*, 386 U.S. 120 (1967), the trial court in its *per curiam* opinion stated:

> In *Kilgarlin* the three-judge court was assured by the defendants that the State's policy "limits the size of any multi-member district to fifteen Representatives" and that any county that attained a million or more residents in the future would be subdivided for Representative districts. In their trial brief the State asserted that the explanation for the differing treatment of Dallas and Harris Counties was that whenever a county attained a million residents or was allocated fifteen legislators it would no longer be left as an at-large district. The district court in *Kilgarlin* approved the disparate treatment between Dallas and Harris Counties in the 1965 apportionment bill in reliance upon the State's representation that different treatment would be accorded a county once it attained a million population. Dallas County now has a population of well over one million, a greater population than Harris had in 1960. This earlier "policy" of the State of Texas was called to the attention of the redistricting board during its pub-

[6]The trial court mistakenly believed that only two Board members were defendants in *Kilgarlin*. Actually, Barnes as Speaker of the House, Martin as Secretary of State and Calvert as Comptroller were defendants. In addition Mutscher, though not a defendant, was Chairman of the House Redistricting Committee which drafted the plan before the Court in *Kilgarlin*.

lic hearings but was apparently ignored. The board's unexplained abandonment of an existing state policy belies the presence of any rational state policy. (A.Jur.S. 20A-21A.)

It is noteworthy that Barnes, who was a defendant in *Kilgarlin*, in his deposition professed ignorance of the previously enunciated State policy in question. Furthermore, he testified that Martin failed to advise him or the Board on this matter.[9]

B. *Irrational and Inconsistent Treatment of Specific Areas*

The basis for reapportionment litigation is the Fourteenth Amendment right of citizens "to an effective vote within the general constructs of what is essentialy a majoritarian system of representative government" together with "the First Amendment right to associate politically whether in majority or minority." (A.Jur.S. 25A-26A.) "The concept of equal pro-

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[9]Barnes testified: (Barnes Dep. at 136, ll. 1-19.)

Q. You don't know that the state has ever taken the position that once a county reaches, say, a million population, that it is at that point where that county should be divided?

A. No, I don't think they have taken that position. If they have taken it, it has been without my knowledge.

Q. The Attorney General did not advise you along those lines?

A. Are you telling me that the Attorney General of Texas in the past has taken the position that when a county reaches a million population, it must be divided?

Q. No, no, I am just simply asking you whether he ever advised you of that.

A. No, he did not advise.

Q. Do you recall whether Speaker Mutscher brought this up in any way?

A. No.

tection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged." *Reynolds v. Sims*, 377 U.S. 533, 565 84 S. Ct. 1362, 1383 (1964). A restriction on the franchise, such as is presented in a reapportionment case, affects a basic fundamental right. Therefore, the State is required to justify any disparate treatment by a showing of a "compelling state interest." *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 86 S. Ct. 1079 (1966); *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802, 806, 807, 89 S. Ct. 1404, 1407 (1969).

In considering "compelling state interest" and the rational application of state policies, it is important to distinguished between matters which formed the basis for a decision and matters which are simply after-the-fact justifications contrived to explain illogical inconsistencies. For just as certainly as the equal protection clause of the Constitution forbids a plan which is violative of official state policy, it interdicts a scheme which reflects "no policy, but simply arbitrary and capricious action." *Baker v. Carr*, 369 U.S. 186, 226, 82 S. Ct. 691, 715 (1962). Thus, Mr. Justice Stewart concurring in *Davis v. Mann*, 377 U.S. 678, 694, 84 S. Ct. 1441, 1449 (1964), stated that "to the extent that a State's legislative apportionment plan is conclusively shown to have no rational basis, such a plan violates the equal protection clause."

By the same token, if a rationale exists for a deviation from an official State policy, then it "must be thoroughly documented and applied throughout the State in a systematic, and not an *ad hoc* manner." *Kirkpatrick v. Preisler*, 394 U.S. 526, 535, 89 S. Ct. 1225, 1231 (1969). Without this requirement of well thought out and evenhanded application of standards

for deviation from State policy, the floodgates of "subterfuge" would be opened. *Kirkpatrick, Ibid.*

1. *Houston v. Dallas*

Distinguishing between the largest major metropolitan areas in Texas is the most obvious and questionable facet of the Board's House plan. As already stated, in *Kilgarlin*, a similar distinction in a former Texas reapportionment plan was attacked as a denial of equal protection and was defended on the ground that a county would get single-member districts on reaching a given size. In reliance on this "official state policy," the federal courts in *Kilgarlin* allowed the disparate treatment of Dallas and Harris County residents.

According to the 1970 census, Dallas County has a population of over 1.3 million persons and, thus, merits eighteen state representatives. It clearly comes within the *Kilgarlin* explanation. Nevertheless, for no enunciated reason, let alone a rational one, the Board chose to abandon this official state policy and leave Dallas County as a multi-member district. This is a prime example of the fact that no consideration was given to previous state policy—a policy that was proffered as a basis for federal court decision in previous redistricting litigation in which three of the five present Board members were defendants.

When faced with such an unequal treatment of almost identical metropolitan areas, other courts have likewise found the districting plans to be invalid. For example, in the highly analogous case of *Drew v. Scranton*, 229 F. Supp. 310 (M.D. Pa. 1964), *vacated and remanded on other grounds*, 379 U.S. 40, 85 S. Ct. 207 (1964), a federal district court struck a plan which contained a curious pattern of representative districts in the larger counties. As that court expressed itself:

> Defendants have offered no explanation for thus dividing 14 of the larger counties entirely into single-member districts while at the same time dividing the 15 other larger counties, many of them adjoining the single-member district counties, into a crazy quilt of 1, 2, 3 & 4 member districts. . . . In the absence of any legislative history or other explanation justifying it and we have found none, we can only conclude that this districting is either the result of gerrymandering for partisan advantage . . . or that it is wholly arbitrary and capricious. The plaintiffs' contention is that thus providing a haphazard arrangement of 2, 3 & 4 member districts alongside of single-member districts violates the basic principle of one man, one vote, which is, as we have seen, implicit in the constitutional sense of equal protection of laws in this field. We are constrained to agree with this contention. 229 F. Supp. at 326.

See *Butcher v. Bloom*, 415 Pa. 438, 203 A2d 556 (1964) and *Kruidenier v. McCulloch*, 142 N.W.2d 355 (Iowa, 1966).

2. *Violations of County Lines*

Article III, Section 26, of the Texas Constitution is the foundation for the official state policy of preserving county lines in legislative districting. It is only where there is an excess of population in one county that it may be split and the balance of that county joined to another county or counties to achieve the additional representation which is required by the population. The Texas Constitution thus forbids wholesale fracturing of county lines except when it is absolutely necessary to obtain population equality. The brief filed on behalf of the State indicates that "the predominant goal of the Board was substantial population equality, with *de minimus* deviations to preserve county lines." Brief for Appellant at 19. The record in this case, however, when read in light of the plan eventually

adopted by the Board indicates that little consideration, if any, was given to this constitutional policy. If the preservation of county lines was a goal and not an after-the-fact justification, then it is hard to understand the treatment of several counties.

Adjusting the constitutional imperative of Article III, Section 26 of the Texas Constitution to the equal protection clause of the Fourteenth Amendment was a serious but far from impossible task. There was no question that in some instances county lines would have to be violated. Therefore, great need existed for some directions or guidelines to govern these situations. Yet, as already shown, the Board failed to provide any.

The trial court was faced with a number of clear cut violations of the Texas Constitution which it discusses in its opinion. (A.Jur.S. 15A-24A.) Nevertheless, the State continues to take the position that it is not required to explain a thing. Each of the examples examined in the following sections of this brief represents an irrational and repeatedly inconsistent approach to apportionment which belies the fact that there is a rational basis behind the plan. *Kirkpatrick v. Preisler*, 394 U.S. 526, 89 S. Ct. 1225 (1969).

3. *Bexar County*

According to the 1970 U. S. census, Bexar County has a population of 830,460 people which entitles it to eleven representatives with a small excess deviation of 1.1% computed according to the figures used by the State. However, for no enunciated reason, let alone a rational one, the Board ignored the mandate of the Texas Constitution to preserve county lines. Bexar County was split and four census tracts were taken from the northwest quadrant of the county and attached to a contiguous but curiously shaped district

identified as District 45. Without the Bexar County spillover, the six counties in District 45 would have had a population of 74,328. This would have been just 317 persons short of the ideal district of 74,645 and would have involved a deviation of less than one-half of one per cent. This unexplained fracturing of Bexar County resulted in raising the population of District 45 from 74,328 to 78,090 and created an excess deviation of 4.6%. Indeed, if Bexar County had been left whole, it would have had only a 1.1% excess deviation computed according to the State's figures which would have been less than the 1.2% deviation in Dallas County where the Board plan did not cut county lines.

The Bexar County situation is an excellent example of an instance where, without large deviation, a county can be left intact. Due service could thus be done to the Texas Constitution and the Equal Protection Clause of the United States Constitution.

4. *El Paso County*

Another curious example of a needless violation of county lines occurs in El Paso County where the County was divided and a portion excised and added to several rural counties. Had this county been left as a multi-member district, it would have had a total population of 359,291 persons and would have been entitled to five representatives. Such treatment would have left the county intact and included an average deviation of 3.7%, which is well within the total range of the Board's plan. However, for a once again unexplained reason, the Board ignored county lines and excised a portion with 61,521 population and attached it to several rural West Texas counties. This is especially irrational since 58,587 of those cut out and added to the rural West Texas counties were citizens of the City of El Paso while 34,096 rural residents of El Paso County

were included in the multi-member district with the balance of the City of El Paso. If for some reason El Paso County needed to be split, then some rationale should have been used to determine what areas should be poured into the pot with the rural counties. Of course, the answer is clear, under the deviations which the Board accepted, El Paso did not need to be split.

5. *Hidalgo County and Lubbock Counties*

When the Texas Supreme Court, in *Smith v. Craddick* (A.Jur.S. 178A-185A), declared unconstitutional the House plan adopted by the 62nd Texas Legislature, that court took great pains to explain to the Board how the counties were to be split if that became necessary:

> 4. With the nullification of the dictate relative to use of the surplus population (less than enough for a district) of a county which already has one or more representatives allocated thereto, it becomes permissible to join a portion of that county (in which the surplus population reside and which is not included in another district within that county) with contiguous area of another county to form a district. For example, if a county has 100,000 population, and if a district of 75,000 population is formed wholly within that county, the *county* is given its district, and the area wherein the 25,000 live may be joined to a contiguous area. (A.Jur.S. 183F.)

This constitutional proviso requires that if a county must be split, the excess must be attached to an adjoining legislative district and not spread out among two or more legislative districts. There should have been no question as to this procedure since it is the way in which the legislature handled reapportionment in 1967. (A.Jur.S. 16A.) Furthermore, it is clear that the Texas Constitution intended to preserve some integrity to the power of persons living within a county. Thus, when the Board adopted a plan which in "four

separate instances has split the surplus (the population greater than that allocable to a whole number of representatives) between two adjoining districts" (A.Jur.S. 16A) some serious questions about violation of policy are again raised. As the trial court observed, "The State has ventured no explanation whatsoever even of the necessity for these depredations of State policy." (A.Jur.S. 16A.)

Of special note, however, is the differing way in which Hidalgo (population 181,535) and Lubbock (population 179,295) Counties were handled. Since the populations of these two counties are almost exactly the same, one would expect that they would be treated the same. As usual, nothing could be farther from the truth.

Since each county would, by population, be entitled to 2½ representatives, it was necessary to split these counties, one of those instances described in *Smith v. Craddick* (A.Jur.S. 178F-185F) when the Texas Constitution must give way to the Equal Protection Clause of the United States Constitution. The Board split 31,573 persons from Lubbock County and attached them to the more rural Hale and Swisher Counties to create District 76 with a population deviation of 1.9%.

In the case of Hidalgo County, the Board also created a less than county wide multi-member district. This one, District 59, consisted of 144,995 persons and had a population deviation of 2.9%. However, Hidalgo County's 36,540 excess population (which is about one half of a district) was split between two other adjoining districts. District 49 received 26,840 of this surplus and District 51 got the remaining 9,700. District 49 is a large, Gulf Coast district composed of three rural counties and includes the legendary and vast King Ranch. Hidalgo County is a landlocked, metro-

politan Rio Grande River county. Thus, by splitting Hidalgo County as it did, the Board diminished the effectiveness of the residents of Hidalgo County in influencing the third legislative seat to which they are partially entitled. No explanation for this irrationally differing treatment of Lubbock and Hidalgo County has been offered.

A less obvious, but equally questionable, irrationality should also be noted in the Board's treatment of Lubbock County. The City of Lubbock, population 149,101, was split. A total of 11,543 residents of the City of Lubbock were thrown in with two adjoining rural counties to make up District 76 while an almost equal number of persons from rural Lubbock County were included with the rest of the City of Lubbock to compose the Lubbock County multi-member district.

The City of Lubbock's population of 149,101would merit almost exactly two representatives. This would have resulted in an average population, according to the State's theory of deviation, of 74,550 persons or a minimal deviation of 0.12%. Likewise, if the entire balance of 30,194 population of Lubbock County was attached to Hale and Swisher Counties, the total population for District 76 would have been 74,700, which would once again result in a minimal deviation of 55 persons or 0.07%.

There is no rationale to the splitting up of the City of Lubbock when a further comparison is made to the way in which the Board plan handled Potter County (Amarillo) in which an entire metropolitan district was formed out of the City of Amarillo (District 67) before including the remainder of that city with rural Potter County and Randal and Carson Counties to create District 65.

Lubbock County thus is a prime example of a situa-

tion where, if rational guide lines or standards had existed, the resultant deviation would have been much more acceptable.[10]

6. *Jefferson County*

Jefferson County is another example of an unexplained situation where a multi-member district (here District 7) was created and the excess was diverted into two seperate adjoining counties. Once again, no rational explanation was offered for this violation. However, the Jefferson County situation is especially significant since the scheme makes use of block groups rather than census tracts. When a plan ceases to use census tracts or enumeration districts and begins to operate with block group data, then much more basic building blocks become available and a considerably lower deviation should be required.[11] For example, Block 4 of Census Tract 3 in Jefferson County has a population of 12 while Block 7 of that same tract has a population of 34. When this is compared to the total population of Census Tract 3, which is 15,885, it becomes obvious that the tools are available to draw an almost perfect plan.

One could go on *ad nauseum* cataloging the violations of state policy which the trial court examined and found completely lacking in rationality and which re-

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[10]If there is any theoretical reason behind the use of multi-member districts, it must be to preserve the integrity of political subdivisions. In the Board plan, only three of the eleven multi-member districts preserve county integrity.

[11]Census tracts are small relatively permanent areas into which large cities and adjacent areas are divided for the purpose of providing comparable small area statistics. The tracts are intended to be homogenous reflecting similar population characteristics such as economic status and living conditions. Census Blocks are subdivisions of census tracts which in many instances conform with a single city block. Enumeration districts serve the same function in rural areas as census tracts do in the more urban areas.

mained totally unexplained before said court. (A.Jur. S. 16A.) In fact the district court found that the Board plan cut the boundaries of 19 counties without any explanation of a rational and consistent state policy for so doing at the expense of substantial population deviation. (A.Jur.S. 16A.) With the exception of one small East Texas County, Bowie, no explanation was even proffered to the trial court or to this Court as to the cutting of these counties. Thus, when the State argues in its brief that the plan adopted by the Board contains "only one fully-explained departure from the mandate of the state constitution" (Brief for Appellants at 4) it means just that—one departure for which explanation is offered, leaving 18 other departures which were pointed out to the State by the trial court (A.Jur.S. 15A-18A) and which still remain unexplained.

II.

MULTI-MEMBER DISTRICTS OPERATE TO MINIMIZE OR CANCEL OUT THE VOTING STRENGTH OF RACIAL ELEMENTS IN DALLAS AND BEXAR COUNTIES

A. *The Constitutional Standard*

Although a multi-member district is not, per se, unconstitutional, *Fortson v. Dorsey*, 379 U.S. 433, 85 S. Ct. 498 (1965); *Burns v. Richardson*, 384 U.S. 73, 86 S. Ct. 1286 (1966), within the "circumstances of a particular case [it] may operate to minimize or cancel out the voting strength of racial or political elements of the voting population," *Whitcomb v. Chavis*, 403 U.S. 124, 143, 91 S. Ct. 1858, 1869 (1971). This "tendency" of multi-member districts to adversely affect the franchise of minorities is especially pronounced in

"large" districts which elect a "substantial proportion of either house of a bicameral legislature" or where there is no requirement that the candidates run from "particular sub-districts." *Whitcomb*, 403 U.S. 124, 143, 91 S. Ct. 1858, 1869 (1971).

When the Texas Supreme Court handed down its decision in *Mauzy v. Legislative Redistricting Bd.*, (A.Jur.S. 186F-194F), it recognized that multi-member districts are "justiciable" and tend to minimize or cancel out the voting strength of minorities. That court undoubtedly was aware that Dallas County (population 1,327,321) and Bexar County (population 830,-460) were the type of large districts referred to in *Whitcomb*; that together their representatives comprised approximately 20% of the membership of the Texas House; and that Texas law does not require a candidate for the Texas House from a multi-member district to reside within a geographic sub-district. Thus, it is not surprising that the Texas Supreme Court relied on *Whitcomb* for its *caveat* to the Board to "give careful consideration to the question of whether or not the creation of any particular multi-member district would result in discrimination by minimizing the voting strength of any political or racial elements of the voting population." (A.Jur.S. 193F-194F.) The Texas Supreme Court could not have red-flagged more forcefully the matter to the Board.

What is surprising is that the record, replete with candid admissions in the depositions of the Board members and key staff aides, demonstrates that literally no consideration was given to this important area.[12]. Indeed, Commissioner Armstrong sums mat-

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[12]Calvert testified: (Calvert Dep. at 23, l. 25, p. 24, ll. 1-6.)
Q. In other words, would it be fair to say that you completely ignored in your decisions the racial, whether it

ters up when he attempts to explain why he felt it was not necessary to give the staff any guidelines concern-

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be Negro or Latin American, and ethnic and political interest of various minorities?

A. Yes, I tried to ignore it because I don't think that it had a place in this. My interest was in doing what the mass of the people wanted and I think that we accomplished it.

Armstrong testified: (Armstrong Dep. at 20, ll. 19-24; 21, ll. 1-7.)

Q. Were you as a Board member, apprised by the Attorney General or anybody else as to the case law relating to minorities when it comes to issues of redistricting? I specifically have in mind the constitutional guidelines that redistricting plans must not be drawn in such a way as to not minimize or dilute or cancel out the voting strength of minorities and significant political elements?

A. I am not sure whether I was ever advised of that or whether I read that case, but I was aware personally that that was the law.

Q. Do you know whether the staff was instructed along those—along that line there on that constitutional requirement?

A. My only answer there would be that I didn't do it and I do not recall that the Board did.

Robert Johnson, Executive Director of the Texas Legislative Council, who gave Spellings help in preparing the plan adopted by the Board, testified by deposition: (Johnson Dep. at 39-40, ll. 2-7.)

Q. Yes, but to what extent did you consider the minority groups in drafting the plan?

A. I didn't consider them top side or bottom.

Q. And you didn't receive any instructions from the Board to do that, either did you?

A. No sir.

Greg Hooser, a staff assistant who worked with Spellings and who attended the meetings of the Board, testified in deposition: (Hooser Dep. at 48, ll. 3-10.)

Q. But you made no specific inquiry as to how this plan was going to affect the Blacks, did you?

A. No sir.

Q. You gathered no data relating to how the proposed plans for the House were going to affect the Blacks?

A. No sir, not that I can recall.

Q. And, you were not asked to provide data by the Board or any member of the Board, were you?

A. No sir, not that I can recall.

ing dilution or minimization of minority voting strength:

> I think it was the presumption of the Board that it would be done in a manner which is constitutional. I don't think that anybody felt compelled to instruct; I just think that they felt like if we did it, it had to be constitutional—at least that was my feeling. (Armstrong Dep. at 22, ll. 10-15.)

The result of course was that both the Board and the staff ignored the judicial red flag.

The three-judge federal district court which heard this case, on the other hand, took great pains to examine the use of multi-member districts in Dallas and Bexar Counties in the light of *Whitcomb, supra*, and of the circumstances affecting the Negro and Mexican-American populations, including the historic Texas patterns of racial and ethnic segregation and other invidious forms of discrimination as well as the restrictive aspects, past and present, of the state election laws. Three and one-half days were spent listening to live testimony and well over a thousand pages of depositions were received into evidence together with hundreds of exhibits documenting these Texas patterns. Throughout the entire trial the State maintained, much like Commissioner Armstrong, that it had no burden to explain anything other than that the Board had sought to maintain county integrity.

B. *Condition of Mexican-Americans in Texas and Bexar County*

The major emphasis of this portion of Appellees brief will center on the effect of a multi-member district on the minority residents of Bexar County, Texas, who are primarily Mexican-American.[13] Filed con-

[13]The Mexican-American population in Bexar County according to the 1970 census is 376,027 or 45.28% of the county

currently with this brief is a brief on behalf of Diana Regester, *et al.*, the original plaintiffs, which will address itself to the effect of the multi-member district on the Negro population of Dallas County.[14]

In many ways the problems of the Negroes and the Mexican-Americans are the same.[15] The 220,512 Negroes of Dallas County constitute 17% of the coun-

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population while the Negro population is 56,394 or 6.79%. In Dallas County, on the other hand, the Mexican-American population is only 88,651 or 6.68% while the Negro population is 220,512 or 16.61% of the county population. Thus, each minority has substantial population in the county where the other minority predominates.

[14]Because of the time element, evidence was offered only as to the Dallas and Bexar County multi-member districts. The trial court in its opinion notes: (A.Jur.S. 24A-25A, n. 7.)

> Attorneys for the plaintiffs in the cases originally filed in the Eastern, Northern, and Western Districts indicated to the court that, because of the inherent time limitations incident to these actions, they would have difficulty in fully developing the evidence relating to their claims regarding multi-member districts other than Dallas and Bexar, and that therefore they would confine their evidence to the situations obtaining in those two counties. In response to this situation the Assistant Attorney General, representing the State at the preliminary pre-trial conference on December 22, 1971, observed:
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> > "This is my personal view entirely, but I would think that the Plaintiffs' case can either be made or not be made in two or three of the major metropolitan areas, and I would anticipate, at least, that if the multi-member districting were knocked out, say in Dallas and Tarrant County and Bexar County, that probably it would not be used elsewhere either, so that I have some difficulty personally in seeing the necessity of trying these issues as to eleven different metropolitan areas."

[15]Appellees, at trial, introduced testimony relating to the Mexican-American population in Dallas County. However, for the sake of brevity, no detailed discussions will be made in this brief of the conditions of Mexican-Americans in said County which are similar to those of Mexican-Americans in Texas and in Bexar County as well as to those of the Negro. For example, until recently there were only nine Mexican-American policemen in Dallas; only one fireman at time of trial; and only five Mexican-Americans have served on grand juries in the last 80 years. (Record at 723-746.)

ty population and 25% of the city population. They live in Negro neighborhoods which are clearly defined in terms of poverty, high dependence on public welfare and other adverse factors. They are the product of a society that was rigidly segregated by state and local laws and customs. (A.Jur.S. 38A-39A.)

The Mexican-Americans in Bexar County, like the Dallas County Negroes, constitute a large minority. Of the 830,460 residents of Bexar County, over 376,000 are Mexican-American.[16] They, like the Negroes in Dallas, live in clearly defined Mexican-American neighborhoods, also known as *Barrios*, which have shocking conditions in terms of low incomes, inferior educational opportunity, poverty and high levels of unemployment. (Record at 524-527.) Although Texas has never had laws which overtly discriminated against the Mexican-American, this minority has suffered just as much segregation and other forms of discrimination by the application of laws as the Negroes have by the existence of laws. *Hernandez v. Texas*, 347 U.S. 475, 74 S. Ct. 667 (1954).

> When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based upon some reasonable classification, the guarantees of the Constitu-

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[16]The State in its brief argues that Mexican-Americans in Bexar County constitute a majority or at least a plurality. Actually, in the County, they constitute approximately 45% (Anglos constitute 47%, Negroes 7% and all others 1%) and only in the City of San Antonio, in which within its geographical boundary exist a number of separately incorporated and predominantly Anglo populated communities, do Mexican-Americans constitute 52% of the population. Thus, it is clear that Mexican-Americans are neither a majority nor a plurality in Bexar County. But even if they were, as the trial court's opinion notes, the term "minority" in the context of the Constitution's guarantee of equal protection does not have a mere numerical denotation. (A.Jur.S. 49A, 54A.)

tion have been violated. The Fourteenth Amendment is not directed solely against discrimination due to "two class" theory—that is, based upon differences between "White" and "Negro." *Hernandez v. Texas*, 347 U.S. 475 at 478, 74 S. Ct. 667 (1954).

The trial court's opinion finds that "because of long standing educational, social, legal, economic, political and other widespread and prevalent restrictions, customs, traditions, biases and prejudices, some of a so-called *de jure* and some of a so-called *de facto* character, the Mexican-American population of Texas, which amounts to about 20%, has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others." (A.Jur.S. 45A.)"

"Specifically there has been substantial federal and state court litigation dealing with a number of these areas as they relate to Mexican-Americans. Some of these cases are:

Hernandez v. State of Texas, 347 U.S. 475, 74 S. Ct. 667 (1954). This Court found systematic exclusion of Mexican-Americans as a class from jury duty in Jackson County, Texas.

Munis v. Beto, 434 F.2d 697 (5th Cir. 1970). Discrimination was found in the selection of El Paso County grand juries.

Rodriguez v. Brown, 437 F.2d 34 (5th Cir. 1971). This case resulted in legislation which abolished the freeholding requirement for grand jury commissioners and grand jurors.

Puente v. Crystal City, Civil Action No. DR-70-CA-4 (W.D. Tex. April 8, 1970) (Unreported). A freeholder requirement for city office in Crystal City which discriminated against Mexican-Americans was held unconstitutional.

Juarez v. State, 102 Tex. Crim. 297, 277 S.W. 1091 (1925). Requirement that grand juries contain no members of Roman Catholic faith found to violate the equal protection clause of the Fourteenth Amendment to the U. S. Constitution.

Rodriguez v. Smith, Civil Action No. 70-C-235 (S.D. Tex. 1971) (Unreported). Case resulted in legislation which abolished the use of property tax rolls in filling jury wheels and substituted registered voter lists.

Garza, et al v. Smith, 320 F. Supp. 131 (W.D. Tex. 1971), *vacated and remanded on other grounds*, 401 U.S. 1006, 91 S.

The evidence before the court showed that in Texas the median family income for Mexican-Americans was only 57% of that of the Anglo-American (Exhibit BI-

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Ct. 1251 (1971), 450 F.2d 790 (5th Cir. 1971). The court held that Texas statute which allowed assistance to physically disabled or blind voters but forbade similar assistance to illiterate voters constituted a violation of equal protection.

Beare v. Smith, 321 F. Supp. 1100 (S.D. Tex. 1971). Resulted in legislation now in effect, pending appeal, which did away with the annual voter registration requirement and instituted a permanent voter registration system.

Independent School District v. Salvatierra, 33 S.W.2d 790 (Tex. Civ. App.—San Antonio), *cert. denied* 284 U.S. 580 (1931). Upheld a Texas practice of segregating Mexican-Americans on the basis of English language difficulty.

Delgado v. Bastrop Ind. School Dist., Civil Action No. 388 (W.D. Tex. June 15, 1948) (Unreported). Found unconstitutional segregation of Mexican-American children by means of grouping according to alleged language deficiencies.

Hernandez v. Driscoll Consol. Ind. School Dist., 2 Race Rel. L. Rept. 329 (S.D. Tex. 1957). Found an abuse of classification according to language deficiency to be "unreasonable race discrimination" Id. at 331-32.

Chapa v. Odem Ind. School Dist., Civil Action No. 66-C-92 (S.D. Tex. July 28, 1967) (Unreported). Enjoined a school district from maintaining a separate school for Mexican-American children.

Cisneros v. Corpus Christi Ind. School Dist., 324 F. Supp. 599 (S.D. Tex. 1970), *aff'd*, 467 F.2d 142 (5th Cir. 1972). Found Mexican-American children to have been segregated by school Board policy.

Perez v. Sonora Ind. School Dist., Civil Action No. 6-224 (N.D. Tex. Nov. 5, 1970) (Unreported). Resulted in a closing of "The Mexican School," and the establishment of a unitary school system in Sonora, Texas.

United States v. Texas Educ. Agency, (Austin Independent School District) 467 F.2d 848 (5th Cir. 1972). Found Mexican school children to have been segregated as a result of school board action.

United States v. Texas, (Del Rio San Felipe Ind. School Dist.) Civil Action No. 5281 (E.D. Tex. Dec. 6, 1971). Found discrimination in educational opportunities offered Mexican-American students in Del Rio, Texas.

Rodriguez v. San Antonio Ind. School Dist., 337 F. Supp. 280 (W.D. Tex. 1971), *prob. juris. noted* ..... U.S. ....., 92 S. Ct. 2418, *argued* October 12, 1972. Found discrimination in the Texas system of school financing. Involves Bexar County school district.

17-143 at 22-23) and that Mexican-Americans tended to be primarily unskilled laborers.[18] The evidence further demonstrated that in 1966 the employment practices of major employers in the largest metropolitan areas of Texas resulted in the fact that persons with Spanish surname were employed in "a disproportionately small number of well paying jobs."[19] (Exhibit BI-17-143 at 23.) In 1965 it was estimated that Mexican-Americans constituted 95% of the estimated 167,000 migrant farm workers in Texas. (Exhibit BI-17-143 at 23-24.) Furthermore, even in the areas of civil service, Mexican-Americans were concentrated in the lower paying jobs.[20]

This state wide problem with income and employment was especially true in the *Barrio* section of the City of San Antonio.[21] This area, well known through-

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[18]In Texas only 24 per cent of Mexican-American males were in the professional, technical, managerial or craft occupations compared to 45 per cent of the Anglos. One-fourth of the females over the age of 14 were reported employed and approximately one-third of this number were in the white-collar fields as compared with two thirds of the employed Anglo females in those areas. (Exhibit BI-17-143 at 23.) *Hearings before the United States Commission on Civil Rights*, San Antonio, Texas, December 9-14, 1968.

[19]One example presented to the United States Commission on Civil Rights indicated that in the garment industry Mexican-Americans constitute more than 80% of the work force but held only 42% of the white-collar jobs as opposed to the fact that while Anglos comprised only 15% of the work force, they held 57% of the white-collar jobs. (Exhibit BI-17-143, at 23.) *Hearings before the United States Commission on Civil Rights*, San Antonio, Texas, December 9-14, 1968.

[20]Mexican-Americans constitute 18% of federal employees in grade levels G.S. 1-4 but only 2.3% of G.S. 12-18. For the Postal Service Mexican-Americans accounted for 11.3% of the low paying P. F. S. grades 1-4 but only 1.4% of the P. F. S. grades 12-20. (BI-17-143, at 24.)

[21]At trial reference was made to a 28 contiguous census tract area which in 1960 amounted to over 210,000 persons or about 30% of the Bexar County population and was almost 79% Mexican-American and 4% Negro. (Record at 524, ll. 6-15.) See especially Exhibits BI-1-143 and BI-2-143 for a map delineating this area in orange.

out Texas as "The West Side," included 73.04% of the Bexar County families with median income under $5,000.00 as contrasted with only 2.18% of those with median income over $25,000.00. (Record at 525, ll. 1-6.) Although it contained 29.55% of the county work force, 46.33% of Bexar County's unemployed resided there. (Record at 525, ll. 17-20.)

In the area of health, the evidence indicated that Mexican-Americans were much more likely than Anglos to suffer from diseases such as pneumonia, diabetes, and the various crippling child diseases. (Record at 491, ll. 3-8.) Indeed, the *Barrio* area of San Antonio contained almost 60% of the total Bexar County dwelling units lacking some or all plumbing facilities. (Record at 526, ll. 19-25.) By the same token the housing in the *Barrio* is generally dilapidated, unsafe and overcrowded.[22]

In the area of education, the trial court found that Mexican-American children face an "often insurmountable disorientation" due to the fact that they are reared in a subculture in which Spanish is the primary language. (A.Jur.S. 49A.) In a large percentage of Mexican-American homes, English is used "only as a second language when necessary." (Exhibit BI-12-143 at 66.)

The cultural background, including the use of Spanish as the vernacular language, of Mexican-American children has affected adversely their school attendance and performance as well.[23] For example, while the

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[22]The evidence showed that "only 60% of the Mexican-Americans in San Antonio lived in what federal agencies consider safe and sound housing." (Record at 490, ll. 11-12) and that the average value of the housing in the *Barrio* is considerably less than the Bexar County averages. (Record at 524, ll. 16-23, 527, ll. 1-7.)

[23]The United States Civil Rights Commission studies indicate that Texas has the poorest record of any of the southwest-

Barrio in San Antonio comprises only 30.82% of the population of Bexar County, 65.43% of the persons in Bexar County who have never attended school live there. (Record at 525, ll. 10-14.) This problem is further illustrated by the *Barrio* where two of the county's 19 school districts (three of which are in military installations) account for 74% of the county drop out rate.[34] (Record at 492, ll. 23-25; 493, ll. 1-4.)

Outright segregation of Mexican-American children in Texas schools is still another manifestation of the group's serious educational problems.[35] And again the

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ern states in holding Mexican-Americans in school. Before the completion of the 12th grade, 47% of Mexican-American pupils have left school. (Exhibit BI-16-143 at 17.) The likelihood that a Mexican-American will drop out of school is 3.2 times that of an Anglo as compared to the Negro who is 2.4 times more likely than an Anglo not to finish school. (Exhibit BI-16-143, at 20.) Expressed in other terms, only 53% of Mexican-Americans and 64% of the Negroes who enter the first grade graduate from high school. (Exhibit BI-16-143 at 31.)

In the area of reading achievement, the Commission report demonstrated that in the 4th grade, 52% of all Mexican-American students were deficient as compared to 21% of the Anglos and that by the 8th grade, of the Mexican-Americans remaining in school, three-fourths were found below average and 50% of those were more than 2 years below grade level. (Exhibit BI-16-153 at 31.) The study concluded that, of the Mexican-Americans who complete high school, 44% "suffer severe reading retardation." (Exhibit BI-16-143 at 34.)

In the corresponding area of grade repetition, 22% of the Mexican-Americans and 21% of the Negroes in Texas are required to repeat the first grade as contrasted with only 7% of the Anglo students. (Exhibit BI-16-143 at 36.) Indeed, by the 8th grade 16.5% of Mexican-Americans and 8% of the Negro pupils are two or more years over age. (BI-16-143 at 36.)

[34]One of these school districts, Edgewood Independent School District, was before this court this term in *San Antonio Ind. School Dist. v. Rodriguez*, Cause No. 71-1332 which involved the area of school finance.

[35]The United States Civil Rights Commission Report entitled *Ethnic Isolation of Mexican-Americans in the Public Schools of the Southwest, Report I*, in evidence as Exhibit BI-15-143, indicates that in Texas 70% of all Mexican-American elementary students attend predominately Mexican-American

pattern of school segregation—or, put differently, ethnic isolation—is pronounced in Bexar County.[36]

Mexican-Americans in Bexar County and in Texas generally have suffered from legal and other barriers, customs or practices dealing with the purchase, sale and financing of real estate which had the result of confining them to areas such as the San Antonio West Side.[37] Restrictive covenants in real estate transactions were one widespread means used to accomplish this. Texas courts enforced such covenants until they were outlawed in *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836 (1948) which was followed in *Clifton v. Puente*, 218 S.W.2d 272 (Tex. Civ. App.—San Antonio, 1948, writ ref'd, n.r.e.) One example of such a covenant against Mexican-Americans and Negroes which was engrafted in a deed to two tracts of land in Bexar County and which jointly involved 287 acres is Exhibit BI-20-143 at 3 which was admitted in evidence.

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schools and that approximately two-thirds of school age Mexican-Americans are in but 16% of the State's schools. (Exhibit BI-15-143 at 28.) Indeed, of all the southwestern states, this pattern of segregation is the most pronounced in Texas (Exhibit BI-15-143 at 28) since three-fourths of all Mexican-American pupils in the southwestern states who attend predominantly Mexican-American districts live in Texas. (Exhibit BI-15-143 at 32.)

[36] *The United States Civil Rights Commission Report I* found that the Mexican-American pupils in five of Bexar County's nineteen school districts represent nearly 30% of all Mexican-American students who attend predominantly Mexican-American schools in Texas. In other words five Bexar County school districts represent 30% of all educationally segregated Mexican-Americans in Texas. There are 1,231 school districts in Texas. (BI-15-143 at 25.) Richard Avena of the United States Civil Rights Commission testified that not only are the Bexar County school districts segregated, but within the districts segregation exists on a school by school basis. (Record at 491, ll. 15-25.)

[37] See Record at 1006-1009 for evidence relating to the effect on Mexican-American residential segregation of FHA mortgage financing practices.

(Record at 1015, ll. 8-12.) This land was conveyed for residential subdivision purposes in 1949 by an individual who was Mayor of San Antonio for six years.[28] (Record at 1014, ll. 24-25; 1015, ll. 1-6.) It is noteworthy that this covenant was used some twenty months after *Shelley v. Kraemer, supra*, was decided.

As in the case of the Negroes, the Mexican-Americans politically have been affected adversely by the poll tax, *United States v. Texas*, 252 F.Supp. 234, 245 (W.D. Tex. 1966), *aff'd* 384 U.S. 155, 86 S. Ct. 1383 (1966); the excessive filing fees, *Carter v. Dies*, 321 F.Supp. 1358 (N.D. Tex. 1970); the annual registration requirement, *Beare v. Smith*, 321 F.Supp. 1100 (S.D. Tex. 1971); and the residency requirement of six months prior to an election when one moved from county to county, *Whatley v. Clark*, ... F.Supp. ..... (E.D. Tex. 1972). These are some of the basic manifestations in the Texas electoral system of what was referred by Appellees' expert as the "legacy of slavery, racism, and prejudice," (Record at 290, ll. 6-7.) Since Mexican-Americans are generally found to be poorer than Anglos, the poll tax and the filing fee discriminated against them as much as against Negroes. Since the Mexican-Americans are generally found to have lower educational achievement and a different vernacular language and since they comprise 95% of the Texas migrant agricultural workers, the annual voter registration requirement and the resi-

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[28] The actual covenant reads:
"(7) No lot, tract, or re-subdivision thereof, shall ever be sold, leased, demised or conveyed by deed, lease, gift or otherwise to Mexican, Negroes, or persons of either Latin American or African descent, nor shall any lot, tract or re-subdivision thereof ever be used or occupied by Mexicans, Negroes, or persons of either Latin American or African descent except as household servants."

dency requirement imposed on them even more serious handicaps for participation in the electoral process than they did on the Negroes. Additionally, because of non-attendance in school, drop out rates and other educational handicaps they were particularly singled out by the Texas Election Code provisions allowing election judges to aid blind and physically disabled voters in marking their ballots but denying the same aid to illiterate voters until these provisions were set aside as unconstitutional in *Garza v. Smith*, 450 F. 2d. 790 (5th Cir. 1971).

The trial court also had before it evidence of poor performance by Bexar County Mexican-Americans in previous elections of State Representatives from Bexar County. In the period of 1880 to 1970 no more than 27 Mexican-Americans ran for the State legislature, (Record at 530, ll. 9-15.) Of that number, only five were elected—one in 1890 and four since 1961, (Record at 529, ll. 17-25.) Furthermore, in the years 1960-1970, Mexican-Americans entered only 22 of the 133 races for these positions in the Democratic Party Primary. (Record at 654, ll. 3-14.)

Specifically with reference to the *Barrio* area, only four persons offered themselves as candidates from 1960-1970. (Record at 533, ll. 6-10.) Of these, only two were Mexican-Americans, one was a Negro and one was an Anglo. (Record at 533, ll. 10-12.)

Based upon a study of all the elections for the Texas House in Bexar County from 1880 to 1970 several conclusions were received in evidence by the district court and not contested by the State. First, Mexican-Americans are much more likely to vote for Mexican-Americans than for Anglos. (Record at 534, ll. 18-25; 535, ll. 1-20.) Next, when Mexican-Americans run against Mexican-Americans, the vote tends to split between

them. Record at 535, ll. 20-25; 536, ll. 1-5.) Third, where there are no Mexican-Americans in a race, the Mexican-Americans tend to vote for the most popular Democrat—usually the winner. (Record at 536, ll. 7-10.) Fourth, the Republican Party is clearly a minority party.[29] Another conclusion, likewise uncontroverted by the State, resulted from a comparison of how predominantly Anglo precincts vote in contrast to the *Barrio* area. This study indicated that Anglos tend to vote in the neighborhood of 6-1 to 9-1 against Mexican-Americans. (Record at 769, ll. 15-25; 770, ll. 1-25; 771, ll. 1-15.)

It is thus clear that economically and educationally Mexican-Americans have in the past and continue to the present to be greatly disadvantaged in terms of competing with their fellow citizens. It was specifically the overall context of the educational-langauge problems encountered by Mexican-Americans that led the trial court to note that "[t]here is no aspect of human endeavor, in general and of American life in particular, in which the ability to read, write and understand a language is more important than politics." (A.Jur.S. 50A.) The trial court drew certain inferences from the minimal impact of Mexican-Americans on the elections for the Texas House from Bexar Coun-

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[29]The study of Bexar County elections disclosed that since Reconstruction no Republican has ever been elected to the Texas House from Bexar County and that in 1970 only one Republican offered himself for election and nine Democrats were unopposed in the general election. The sole Republican candidate received only 29,240 votes as opposed to 88,525 for his Democratic opponent. In 1968, five Republicans ran in contested races and five Democrats were unopposed in the general election. Again, no Republican was elected. In 1966, only three Republicans ran for ten House places. Generally, Republicans tend to lose in ratios running from 3-1 to 3-2. The largest vote ever received by a Republican in a Republican Primary election was 5,016 votes. (Record at 542, ll. 23-25; 543; 544; 545, ll. 1-9.)

ty. First of all the court reasoned that the political participation is affected by "a cultural incompatibility which has been fostered by a deficient educational system." (A.Jur.S. 50A.) The ability to read and write effectively and possession of minimal educational attainment are necessary for any participation in the political process.

The Court next found:

> This cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary. (A.Jur.S. 51A.)

Indeed, on direct examination, the State's own witness, Roy Barrera, a former Secretary of State (the State's Chief election officer), recognized the effects of past and *continuing* discrimination against Mexican-Americans in reducing their participation in the political process.

> A. I believe that one of our major problems in San Antonio, as in other communities, has been a lack of participation by our people. However, of course, this has been aided and abetted, to a great extent, and contributed to by other factors which I would certainly cite; among them being discriminatory practices that have been heretofore inherent in our election processes, yes.
>
> Q. Are those factors presently being removed?
>
> A. I would say that to a great extent, they have been and are being removed.
> (Record at 559, ll. 14-24.)

Under cross-examination he conceded that some of the adverse factors removed or in the process of being

removed are the poll tax, the filing fee and the requirement of annual voter registration and that in every case the change was brought about as a result of litigation in the federal courts which these requirements to be unconstitutional. (Record at 593, ll. 8-25; 594, ll. 1-3.)

C. *The Distinction Between Texas and Indiana*

At the trial and in this Court the State relies on *Whitcomb v. Chavis*, 403 U.S. 124, 91 S. Ct. 1858, (1971), to assert that Appellees' claims are unfounded. The State disagrees with the trial court's construction and interpretation of said case and with the conclusions which drew from its understanding of the law as expounded by this Court in *Whitcomb*. Appellees submit that the trial court correctly analyzed the case and applied its teaching with great care to the Texas situation.

In Marion County, Indiana, which provided the factual setting for *Whitcomb*, there is a substantial Negro minority, a large percentage of whom live in a ghetto. Appellees offered expert testimony at the trial from Dr. Clifton E. McClesky of The University of Texas who testified as follows on the basis of a comparative study of minority groups and their access to the political processes in Texas and Indiana:

> A. Yes, sir. It seems to me that the differences there are of four sorts. The State of Indiana simply does not have the legacy of segregation, slavery, racism and so on that this state has. Another difference is social in nature. Minority groups in the State of Indiana, generally speaking, and particularly Black minorities, have higher socioeconomic status and are thus better able to organize themselves to mobilize themselves to defend their interest and to seek effective representation. A third factor for it seems to me is the difference in

the rules of the game. In the State of Indiana there is no double primary, there is no majority requirement and there is no place system in legislative contest; that does make a difference.

JUDGE JUSTICE: There is no what?

A. No place system. The top five or ten or whatever men in a given district will win regardless of whether there is any—Well, there is no place designation. The fourth factor, it seems to me, is the political context. Indiana is a competitive state with pervasive and continuous party competition at almost every level.

(Record at 287, ll. 10-25; 288, ll. 1-7.)

McClesky's testimony was in the context of the Negro minority in Dallas County though his conclusions, obviously, apply to the Mexican-American minority as well. As relates to the Mexican-American and Bexar County, Dr. Charles L. Cotrell of St. Mary's University in San Antonio corroborated McClesky and expanded on the issue. He was not even cross-examined by the State; hence, his expert testimony on the record stands uncontradicted.[30]

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[30]Dr. Cotrell testified (Record at 652, ll. 7-25; 654; 655, ll. 1-15):

A. The question of representational schemes, the question of ballot schemes and the question of general election schemes has long been a subject for the study of political scientists.

Beginning with political scientist Maurice Duverger in the '50's and then continued in the 60's by political scientists such as V. O. Key, I think one could reach conclusions such as these about election schemes, representational schemes and so on.

Duverger concluded after a very exhaustive study—his work was substantiated by V. O. Key, and I think that there is data to substantiate this in Bexar County—that the plurality system encourages both recruitment and election of more diverse factions than does the majority system as a ballot system.

Based on this testimony, the trial court found:

In addition, unlike the plurality system in Indiana, Texas has a strict "majority" requirement in the primary. Virtually unknown outside the South, the majority requirement has not escaped considerable criticism on both Fourteenth and Fifteenth

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Duverger found that, in fact, the two ballot system, that is, that a majority ballot with a runoff, was the kind of system which least encourages both the recruitment—and I think that is an important issue here—the recruitment and the election of candidates to office. In Bexar County I believe that that would be borne out by this fact. From the period 1960 to 1970, in the recruitment stage, and I hope that the Court would consider this a vital part of the electoral process—the recruitment of candidates—only twenty-two of a hundred and thirty-three, in a hundred and thirty-three races in a democratic primary, only twenty-two of those were entered by Mexican-Americans at the state legislative level in the Democratic primary, bearing out the Key-Duverger thesis showing that certain kinds of representational systems and so on discriminate against diverse factions.

Q. Of course, actually we do not have a plurality system in Texas, do we?

A. That's true.

Q. We have the system whereby a candidate has to announce for a place, say in the party primary, and if he does not get a majority vote in the first primary he has to go into a runoff with the next highest candidate. Do you have any views as to how the control of a political party operates under both of these systems that we are talking about, plurality versus majority vote—party control?

A. Well, if you are—your question relates to Bexar County and to Texas. Of course our—there is no real party control in the state in Bexar County, at least, in the state legislative races. There is no control concerning the recruitment of candidates and so on.

Q. For example, is there any formalized procedure whereby the Democratic Party in Bexar County would go about slating candidates for a Democratic Party primary election?

A. Your question concerns party control. No. I would describe the process of recruitment or selection of candidates in Bexar County as informal and almost anarchic.

Amendment grounds. See *Evers v. State Board of Election Commissioners*, S.D. Miss., 1971, 327 F. Supp. 640; *Boineau v. Thornton*, E.D.S.C. 1964, 235 F.Supp. 175. Whatever its constitutional status, it is clear that the majority system tends to strengthen the majority's ability to submerge a political or racial minority in a multi-member district. (A.Jur.S. at 38A.)

Appellees submit that the most obvious difference between the political systems in Texas and Indiana is that in Indiana, as found by this Court in *Whitcomb*, there exists a viable two party system where minorities are able to operate along with other interest groups such as liberals, conservatives, unions, religious groups and the university community in combining to form coalitions and thus are able to influence elections. In Texas, however, there exists a one party system, at least on the county level and certainly in Bexar County. For example, the evidence showed that no Republican had been elected to the Texas House of Representatives to represent Bexar County since reconstruction. Thus, for the position of State Representative, the Democratic Party nomination has always been tantamount to election. This fact places considerable importance on the process of nomination of candidates.

In Indiana, this Court found that there existed slating conventions where party nominees were chosen to run in party primary elections, and it appeared that these choices were usually successful. *Whitcomb v. Chavis*, 403 U.S. 124, 150-152, 91 S. Ct. 1858, 1872-73 (1971). Thus, in Indiana well disciplined minorities are able to and do succeed in placing many of their own candidates on the ballot. If they lose in the general election, as this Court found in *Whitcomb*, it is because their party loses.

The Texas situation contrasts sharply with this.

First of all, with reference to Bexar County, although there is a one party system, that party does not control the nomination process, including the recruitment of candidates. In fact its nomination process was described by Dr. Cotrell as "almost anarchic." (Record at 655, ll. 9-15.) Since members of the State House are elected under the majority place system, a prospective candidate must first overcome the hurdles of the Democratic Party primaries. If he fails to obtain a majority in the first primary, he must then face a runoff election. And he does not have the benefit of party endorsement or support as he enters the primaries for there is no convention or other device to "slate" party candidates. As a matter of course, several candidates usually offer themselves for each place. This often results in no single candidate receiving a majority of the votes requiring a "runoff" election between the two candidates with the highest vote in the first primary. Thus, generally when a candidate favored by a minority enters a primary election and wins the first round, he is almost invariably forced into a runoff and defeated when all opposing forces combine and join against him.

As already stated, Dr. McClesky analyzed the electoral system in Texas as contrasted with Indiana. He concluded that for both theoretical and historical reasons the Texas system tends to minimize the opportunities of minorities to participate in the political process. (Record at 288, ll. 10-25; 289; 290; 291, ll. 1-2.) As also stated, Dr. Cotrell examined the very small numbers of Mexican-Americans who run for election and concluded that the Texas electoral system discourages minority recruitment (Record at 653, ll. 22-25) and this "discriminates against diverse factions." (Record at 654, ll. 3-15.)[21]

[21]The State at note 42 in its brief refers to the testimony of

D. *The Cost Factor*

Of course, the entire situation is compounded by the

Roy Barrera to show that Mexican-Americans have been elected to public office in Bexar County. But a close analysis of his testimony in most instances demonstrates circumstances which are uniquely different from those governing election to the Texas House. Barrera on direct examination made reference to Congressman Henry B. Gonzales (Record at 557, l. 4), to State Senator Joe Bernal (Record at 556, l. 3), to County Commissioner Albert Pena (Record at 556, l. 18), and to Justices of the Peace James Gutierrez and Mike Hernandez. (Record at 554, ll. 22-23.) Under cross examination, however, Barrera conceded that all of these had been elected from single-member districts. (Record at 608, l. 24; 609, ll. 1-5.) Further he testified that Bernal (Record at 575, l. 23), Pena (Record at 579, ll. 16-17) and Gutierrez and Hernandez (Record at 607, ll. 4-25; 608, ll. 2-6) all were elected from predominantly Mexican-American districts.

Barrera also testified on direct that County Court at Law No. 2 Judge H. F. Garcia, District Court Judge John Benavides and Justice Carlos Cadena of the Fourth Court of Civil Appeals all were initially appointed to the bench and thereafter were re-elected *without opposition*. (Record at 555, ll. 3-16.) One Mexican-American, however, who ran in contested races twice for district judge was defeated both times even though he did not run an "ethnic-type campaign." (Record at 574, l. 24; 575, ll. 1-9.)

The only Mexican-American member of the Bexar County House delegation at time of trial had the fortitudinous circumstance for political purposes of having a name that could be used interchangeably in English and Spanish. (Record at 613, ll. 16-19; 579, ll. 3-12.)

Barrera, on direct, testified that Mexican-Americans, including himself, have been elected to the Board of the Edgewood Independent School District (Record at 555, ll. 21-23) but on cross conceded that said district is almost 100% Mexican-American (Record at 569, ll. 9-14.)

Barrera further testified that in 1971 three Mexican-Americans and one Negro had been elected to the nine-member San Antonio City Council, but Gilbert Garza, another witness for the State, testified they had been endorsed by the Good Government League which won all nine seats (Record at 619, ll, 15-18) as a result of a "strong effort" to rid itself of two opposition councilmen (Record at 628, ll. 6-9), including the expenditure of $152,425.84 in two elections (Record at 628, ll. 18-25; 629, ll. 1-11) in contrast to a total of $6,502.60 spent by several candidates from the *Barrio*, (Record at 629, ll. 13-22.)

excessive costs of filing and running in two hard fought primary elections in counties of the size of Bexar and Dallas. It was estimated that the cost of a campaign for a legislative seat in Dallas County could be as much as $125,000.00 while the two year term would pay only $4,800 per year. (Record at 788, ll. 12-25; 789, ll. 1-3.) A specific study done with respect to the cost of running an election in Bexar County demonstrates that the average winner of a contested primary election spent over three times as much as the average loser, even though the winner was often the incumbent. (Record at 536, l. 25; 537, ll. 1-17; 538, ll. 1-21.)

The excessive costs of running in primary, runoff and general elections is higher in multi-member as opposed to single-member districts. Since the data introduced at trial showed that Mexican-Americans and Negroes had considerably lower incomes, it is simple to see how the cost factor influences a member of a minority group's entry into politics and magnifies the effect of the multi-member district's discouragement of candidate recruitment. (Record at 657, ll. 17-25; 658, ll. 1-3.) As the trial court stated, citing *Williams v. Rhodes*, 393 U.S. 23, 89 S. Ct. 5 (1968), "discriminations within the law that affect political candidates correspondingly affect the right to vote and the right to associate politically." (A.Jur.S. 27A.)

Since it is clearly established that it costs substantially more to run in the multi-member districts in Dallas and Bexar Counties than in the single-member districts of Harris County, the threshold question becomes, as stated by the trial court, "Has Texas demonstrated a compelling state interest for treating the candidates and political associations of Houston in a way different than it treats the candidates and political associations of other [similar] metropolitan areas of Texas?" (A.Jur.S. 31A.) There appears to be no

question that for all practical purposes the three metropolitan areas are similar in all respects. The only explanation offered for the differing treatment was that the people in Dallas and Bexar wanted it that way. Yet, as the trial court found, there was serious doubts as to where the Board got this impression. (A.Jur.S. 31A.) Indeed, even if the use of public opinion was sufficient to justify such substantive inequality of treatment, the state must at least thoroughly investigate and document the "wishes of the people." (A.Jur.S. 31A.) However, the fact of the matter is that public opinion cannot justify such distinctions. *Lucas v. Forty-fourth General Assembly of Colorado*, 377 U.S. 713, 84 S. Ct. 1459 (1964).

E. *Legislative Performance*

The State in its brief alleges that the trial court made no finding regarding recurring poor performance by the Bexar County legislative delegation with respect to the *Barrio*; no showing of what the *Barrio's* interests were in particular legislative situations; and nothing to show that the outcome would have been different had said delegation been chosen from single-member districts. It equates the "right to register and vote" with "equality of opportunity to participate in the political process." Brief for Appellants at 35-36. It further refers to a stipulation of the parties that as to Mexican-Americans "there had been no denial in Texas of the right to register and vote since 1961, and the record contains no evidence to the contrary."

Appellees again say this is specious reasoning and a clear misstatement of the record. To begin with the stipulation referred to was restricted to *the individual Mexican-American plaintiffs in the lawsuit.* (Pre-trial Order in Civil Actions A-71-CA-143 and A-71-CA-145, at 3, Stipulation No. 7.) Furthermore, a voter may

have the right to register and vote and still be denied an opportunity to compete *as a candidate* in the political process or to associate politically to further the election of candidates of his choice. Also, Appellees have already shown that the opportunity of Mexican-Americans *as voters* were affected by the poll tax, the excessive filing fees, the annual registration requirement, the six-months residency requirement, the majority place system in Texas as it operates in multi-member districts and the cost factor in campaigning in large multi-member districts.

As to the issue of recurring poor performance, Appellees hold that this cannot be a constitutional standard upon which depends a determination of whether multi-member districts dilute or cancel out the voting strength of minority elements in the population. As this Court knows, this is a subjective measure when applied to determine how and why a specific legislator acted on a specific legislative measure or issue. The interplay of legislative compromise is such that a standard of this nature would be utterly impossible to apply. It certainly is one in which Appellees did not rely at trial for they feel strongly that such a standard is not to be derived from this Court's opinion in *Whitcomb*. The pertinent language thereof was cited in the trial court opinion as follows:

> Nor does the fact that the number of ghetto residents who were legislators was not in proportion to ghetto population satisfactorily prove invidious discrimination absent evidence and findings that ghetto residents had *less opportunity* than did Marion County residents *to participate* in the political process and to elect legislators of their choice. 403 U.S. at 149. (A.Jur.S. 52A.) (Emphasis added.)

It is the opportunity to participate that is important; the opportunity to elect a legislator of one's

choice—or, once elected, to remove him at the next election if his constituency is so disposed. It is this lack of opportunity to participate that this case is about. It strains the imagination to believe the conditions of Mexican-Americans, as depicted by the record in this case, would remain so at time of trial had their legislative representatives been more concerned with the welfare of this group. Appellees readily concede that single-member districts are no panacea, no millennium. They are no guarantee of satisfactory legislative representation—they merely give an opportunity to participate, to elect or to defeat, and to thereby make representation more responsive.

On this point, Appellees further would cite the trial court opinion wherein the court notes:

> An Anglo member of the House of Representatives from Bexar County was unable to identify any piece of legislation sponsored by any member of the Bexar County delegation at the last session of the Legislature to relieve or remedy the adverse conditions extant in the West Side. (A.Jur.S. 52A.)

Appellees, if necessary, say that the history of Texas and Bexar County so fully detailed herein, the conditions of the Mexican-Americans as they presently are and the spate of federal court decisions, many of very recent vintage, are the best standard by which to gauge the performance of the Bexar County legislative delegation.

In closing Appellees believe it is noteworthy to refer to the results of the 1972 elections. A total of 53 candidates entered the Democratic and Republican Primaries held under the court-imposed plan for single-member legislative districts in Bexar County. (Certification, Democratic and Republican Primary Elections held May 6, 1972.) In the November, 1972,

General Election four Mexican-Americans, one Negro and two Republicans were elected to seven of Bexar County's eleven House seats. (Certification of Election Returns, General Election held November 7, 1972.) At time of trial out of ten House members, nine were Anglo and one was Mexican-American. There were no Negroes or Republicans. (Exhibit DB-1-143.)

III.

THE DEVIATION IN THE BOARD PLAN FAILS TO MEET THE REQUIREMENTS OF ONE MAN, ONE VOTE

A. *The State's Assertions*

The State in its brief asserts that the Board plan has a total deviation from population of 9.9%, a deviation ratio of 1.1 to 1 and an average deviation of 1.82%. Brief for Appellants at 11. Given such facts, it argues that "further inquiry [by the courts] is not required . . . ." Brief for Appellants at 26. Appellees' brief heretofore in its discussion of irrationality, or the converse, use of a rational state policy consistently applied, as well as of the dilution of the voting strength of minority population groups—all this in the context of the entire Texas scene, including the historical basis for the present conditions of the minorities, the overall electoral system and other factors—has laid the perimeter in which the Board plan must be analyzed. These factors truly are the "circumstances" which determine what is "marginally permissible" in Texas. *Reynolds v. Sims*, 377 U.S. 533, 578, 84 S. Ct. 1362, 1390 (1964).

Put somewhat differently, the State asserts that "absolute mathematical equality is an impracticable standard which ill serves the goal of fair and effective representation for all citizens." Brief for Appellants

at 27. In footnote 19 keyed to said statement, it argues further that the State may aim for "equality as nearly as practicable" but a *de minimus* standard could be applied to the end product (such standard perforce including the 9.9% top to bottom deviation encompassed in the Board plan) which once met would shift the burden imposed by this Court in *Kirkpatrick v. Preisler*, 394 U.S. 526, 89 S. Ct. 1225 (1969). A burden of "*per se* illegality" as to the "trivial variances" referred to in said footnote would rest on those questioning a redistricting plan. It also asserts the plan under attack "contains an average deviation of only 1.82%. Brief for Appellants at 26. This is specious reasoning by which the State, in effect, seeks to take refuge in what would be a *de minimus*, total deviation of 9.9% resulting from an alleged good faith effort to maintain county integrity. It takes no statistician to conceive the inherent danger in a standard which allows no inquiry into a plan, such as the Board's plan, with a 1.82% average deviation but encompassing a 9.9% total top to bottom deviation. As here, proper inquiry into particularly egregious treatment given specific areas on an *ad hoc* basis, may well belie a rational State policy consistently applied.

B. *The Constitutional Standard*

The trial court's opinion discusses in detail the current state of the law as declared by this Court. (A.Jur. S. 9A-12A.) At page 12A it concludes:

> In any case, the percentages upheld and rejected in other cases are of little enlightment. The critical issue remains the same: Has the State justified any and all variances, however small, on the basis of a consistent, rational State policy?

Appellees submit that this is the proper standard and that adoption of a standard setting a *de minimus*

goal for which any State can strive, and certainly one encompassing a 9.9% total deviation, would merely open the floodgates of "subterfuge" and result in additional litigation.

C. *The Fallacies in the Standard Sought By the State*

The State takes refuge in what it would like to call a *de minimus* deviation of 9.9% resulting from an alleged good faith effort to maintain county integrity. Of course, as has been shown, if the Board did make such an effort, no rationale can be gleaned from the result—a crazy quilt arrangement of multi-member districts for all metropolitan areas except Harris County coupled with wholesale cutting of county lines. Thus, the only justification offered for the deviation which exists in the plan fails, and the State has attempted no other explanation as the trial court clearly found in its opinion. (A.Jur.S. 14A.) The fact of the matter is that while the 9.9% total deviation figure is barely within the range approved in *Abate v. Mundt*, 403 U.S. 182, 91 S. Ct. 1904 (1971), the State has not even attempted to make an explanation such as this Court heard in *Abate*.

Another side of the coin of deviation becomes apparent when one considers that in the light of the size of an ideal Texas legislative district a 9.9% deviation represents almost 7,400 persons. This number of persons is equal to 122% of the ideal North Dakota representative district of 6,056 persons before the district court in *Chapman and Stockman v. Meier*, ____ F. Supp. ____ (D.N.D. 1972, slip opinion, May 22, 1972), and it is 73% of the smallest district (10,086 persons) allowed by the district court for Nevada in *Stewart v. O'Callaghan*, 343 F.Supp. 1080, 1081 (D.Nev. 1972). Thus, as a matter of constitutional precedent, which once established by this Court is applicable nationwide,

what is sauce for the goose is not necessarily sauce for the gander. It illustrates this Court's wisdom in refusing to set a *de minimus* goal to be met by State authorities in devising redistricting plans and in refusing to close off inquiry into the justification for any plan departing from substantial mathematical equality.

D. *Total Deviation is 29.3% not 9.9%*

The 9.9% total deviation alleged by the State, Appellees submit, is incorrect. The actual deviation is 29.3%.

To arrive at 9.9% the Board handled the multi-member districts, in particular Dallas and Bexar Counties, by spreading the actual deviation among the number of representative positions which their populations merited. Thus, the Dallas County population of 1,327,321 persons is 16,289 persons short of 18 ideal districts (74,645×18=1,343,610). The State's method of computing the deviation averaged the 16,289 people among the 18 districts and resulted, according to its figures, in a 1.2% deviation.[22] The Appellees contended at trial, and reiterate their position here, that this computation is both confusing and incorrect. Rather, the entire deviation of 16,289 persons has to be judged against a single ideal district of 74,645. Viewed in this context, the Dallas deviation is 21.67% below the norm. A similar handling of the Bexar County multi-member district results in a 7.6% deviation above the norm. These two deviations, then, represent a total deviation of close to 29.3% rather than one of 9.9%.

It is submitted that this analysis of Appellees is the

[22]In its opinion at A.Jur.S. 13A, n. 5, the trial court criticized the State method as corresponding to the method of computing deviations in flotorial districts which was condemned in *Kilgarlin v. Martin*, 252 F. Supp. 404 (S.D. Tex., 1966.)

most correct expression of the actual operation of a multi-member district in diluting or minimizing a person's vote. When a multi-member district voter enters the polling place, he casts votes for the various places on the ballot. In Dallas County, for example, in each electoral place there is a deficiency of 16,289 persons. Thus, the weight of a vote of a person in Dallas County is increased by the fact that his district is 16,289 persons short. By the same token, the force and impact of a Bexar County multi-member district voter is minimized since there are 5,599 additional voters for each place in which a vote is cast. The effect on each voter in these two districts is the same as if he had lived in a single member district which was either 16,289 persons short of ideal or 5,599 persons in excess of ideal.

Furthermore, it demonstrates the capacity of a multi-member district to submerge voting strength, *Whitcomb v. Chavis*, 403 U.S., 124, 91 S. Ct. 1858 (1971). If the State's method is allowed, a multi-member district the size of Dallas County or Bexar County could absorb or give up an entire legislative district without violating the 9.9% total deviation. Thus, Bexar County could have received 12 rather than 11 representatives with only a 7.52% deviation, and the size of the Dallas delegation to the State legislature could have been reduced from 18 to 17 with an excess deviation of only 4.6%. The average Dallas district would then be 78,078 which is smaller than District 45 (78,090), District 3 (78,943) and District 38 (78,897). To endorse this method of computation is to open another floodgate.

The absurd conclusions which are reached by the foregoing computational excursion point out the problem inherent in the use of a Texas sized multi-member district in conjunction with the requirement of running at large for a given place on the ballot and re-

quiring a runoff election when no candidate in a given place obtains a majority of the vote in the first go-round. As elsewhere stated, this is a far cry from the plurality system of election found in Indiana.

IV.

CONCLUDING ARGUMENT

This Court has recognized that a long history of discrimination has a lingering effect that transforms a procedure or system which appears neutral on its face into one which is discriminatory. *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S. Ct. 849 (1971). In these situations, a state must at least refrain from taking actions which aggravate the discriminatory effect. Since *Whitcomb v. Chavis, supra*, at least two district courts have held a legacy of slavery, racism and prejudice to render multi-member districts discriminatory. *Bussie v. Governor of Louisiana*, 333 F. Supp. 452 (E.D. La. 1971), *aff'd. as to invalidity of multi-member districts*, 457 F.2d 796 (5th Cir. 1971); *Sims v. Amos*, 336 F.Supp. 924 (M.D. Ala. 1972). This Court has distinguished *Whitcomb* on identical grounds recently. *Taylor v. McKeithen*, 407 U.S. 191 at n.3, 92 S. Ct. 1980, 1982 (1972). The evidence before the trial court included not only the history of discrimination, but it was supplemented by evidence of the present workings of the Texas political system.

The State, in its brief, says the broad question presented by this case is whether legislators or data processors are to be entrusted with the job of redistricting. Its representatives thirst for some soothing respite in the form of an exact definition of *de minimus* deviation. They hunger for the days of old when no one was allowed to question their actions. Like Ulysses, they hope that this Court will be attracted to the Sirens of Simplicity. But *de minimus* is not some unicorn on a

mythological field; there is no golden fleece; and this is not simply a case about the right to register and vote. This case is about the political reality of Texas. The plaintiffs below were not "certain political groups." Brief for Appellants at 3. They were the people of Texas demanding an equal voice in the election of their representatives. They are the people of Texas asking for participation in the political process "as a matter of right, not as a function of grace." (A.Jur.S. 41A.)

CONCLUSION

For the foregoing reasons, Appellees respectfully pray that the judgment of the court below be, in all respects, affirmed. Appellees further pray for their costs, including attorneys' fees, in this behalf expended.

Respectfully submitted,
Mario Obledo
Ed Idar, Jr.
George J. Korbel
Frank Hernandez

By :.....

ED IDAR, JR.
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Attorneys for Appellees

CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that three copies of the foregoing Brief for Appellees have this 9th day of February, 1973, been served upon each counsel of record for Appellants in accordance with the Rules of this Court, by depositing same in the United States Mail, with certified mail postage prepaid, addressed to said counsel at their post office addresses.

.....

ED IDAR, JR.

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MICHAEL RODAK, JR.,

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-147

BOB BULLOCK, ET AL,

Appellants,

v.

DIANA REGESTER, ET AL,

Appellees.

On Appeal from the United States District Court
for the Western District of Texas

BRIEF OF APPELLEES, VAN HENRY ARCHER, JR., ET AL

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IN THE

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BRIEF OF APPELLEES, VAN HENRY ARCHER, JR., ET AL

BRIEF OF APPELLEES

This brief is submitted on behalf of the Appellees for the Archer, et al vs. Smith, et al case filed in the San Antonio Division of the Western District of Texas originally involving both the House and Senate Redistricting Plans of the Texas Legislative Redistricting Board. The Court below decided adversely to these Appellees that portion of the case invoving the constitutionality of the Senate apportionment plan and that matter is not before this Court, however, with reference to the apportionment of the legislature, these Appellees challenged the at-arge districting scheme in the State of Texas as set out in the action of the Texas

Legislative Redistricting Board principally involving the at-large election of legislators from Bexar and Dallas Counties on several grounds, including discrimination against lower income residents of the racial and ethnic minorities located in such counties; together with the higher campaign costs required to wage a campaign in these counties which discriminated against the racial, ethnic and lower income voters and candidates.

The Appellees in the Court below represented various minority groups; Negroes, Mexican-Americans, and the Republican party. That by stipulation and agreement, and approval of the trial court below, in open court, that in the interest of time all evidence introduced by one party would be admissible by any of the other parties, in this connection since the other Appellees have filed detailed lengthy briefs on the law and facts presented to the Court below in support of the correctness of the Court below's opinion and Orders; these Appellees feel that it would prove unnecessarily burdensome on this Court to restate all of the testimony, exhibits and law as the same would only be repititious of the same facts, evidence and law herein submitted by the other Appellees, and for this reason, these Appellees adopt by reference the Appellee, Dr. George Willeford, et al, and Joe Bernal, et al, Briefs on the Merits insofar as said Appellees' Briefs apply to the Archer, et al, Appellees, F.R.A.P. Rule 28 (1) U.S.C.A.

JURISDICTION

Appellants contend that jurisdiction of this Court, if any, exists under 28 U.S.C. §1253 and 2101 (b).

QUESTIONS PRESENTED

(1.) Whether the Redistricting Board of the State

of Texas was justified in setting up single-member districts in Harris County and at-large elections in Dallas and Bexar Counties for the election of state representatives (A.Jur.S. 118C), which at-large elections favored the more prosperous candidates and those running on a "ticket" in similar metropolitan areas and whether or not such arbitrary action on behalf of the Board constituted discrimination.

(2.) Whether there was a justification shown by the Appellant in the creation of a plan in which the population deviation was 9.9% (A.Jur.S. 153C).

PROCEEDINGS IN THIS ACTION

That this action was tried before a Three-Judge Federal District Court in the Austin Division for the Western District of Texas, together with three other cases which were consolidated. The Court rendered judgement on January 28, 1972 (A.Jur.S. 1A) after an extensive trial and over a week of depositions. The Court's decision declared that the action of the Texas Legislative Redistricting Board was unconstitutional in regards to the entire legislative reapportionment plan adopted by the Board, saying that no rational state policy was shown to justify population deviation from the one-man one-vote principal. The Court further found that the at-large elections of state representatives in Dallas and Bexar Counties diluted or cancelled the voting strength of minorities in these two counties and directed that the elections in 1972 for the Texas Legislature be held under single-member districts. The Appellant herein sought a stay of the Court Order, which was denied, with opinion by Justice Powell on February 7, 1972, 405 U.S. 1201, and elections were held from single-member districts as ordered by the trial court in the last general elections

in Dallas and Bexar Counties. Probable jurisdiction was noted on October 10, 1972.

ARGUMENT

That the case of *Kirkpatrick vs. Preisler* 394 U.S. 526 (1969) requires mathematical equality and "permits only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality or for which justification is shown." (page 535). That the above language squarely places the burden upon the Appellant to prove justfication for variances; this they failed to do in the trial of the case. The evidence showed that the entire plan was drafted by an assistant with no prior experience or training in a matter of two days (Spellings' deposition p. 26, 11. 5-21.) and which was passed by individual members of the Board at first sight in a matter of hours prior to the expiration time as set by mandate of the Texas Supreme Court (A. Jur. S. 118C). The Appellant apparently disagrees with the findings in the *Kirkpatrick* case (supra) but the fact remains that in order to draw constitutional districts which provide equal representations for equal numbers of people permitting only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality or for which justification is shown is the judgement of the *Kirkpatrick* case. The Appellant has failed to show that a good faith effort was made to achieve absolute equality and has failed to justify any such variances. That the trial Court invited the several parties to the original suit to submit alternate plans but the State refused to submit an alternate plan.

That the adoption of a plan by the State Redistricting Board allowing singe-member districts in Harris

County (Houston) and a different system (multi-member legislative districts) for Dallas and Bexar Counties (A.Jur.S. 118C), constitutes an unconstitutional discrimination against racial and ethnic minorities and those candidates from a lower income level. That it was established in the trial court and undisputed that the geographic and demographic characteristics of Harris County were virtually identical to those of Dallas and Bexar Counties. That there was no attempt on the part of the Appellant to show any significant difference for the treatment of Harris County and that of Dallas and Bexar Counties, and it can only be concluded that the action by the Board was arbitrary and that it resulted in invidious discrimination against the racial and ethnic minorities in Dallas and Bexar Counties and those of very limited financial resources. It was shown that the representatives are much closer to their constituency in single-member districts; were more accountable to the voter and more receptive to his problems and interests in state legislation; a narrower field of interest to represent and a more responsive legislator to the demands of his constituents because of a much smaller constituency. It was shown that the expense of conducting a campaign in a multi-member district was increased considerably over that of a single-member district due to the necessity of approaching or becoming known to a large number of people due to the cost of advertising in the news media, television, radio and newspaper. That in both San Antonio and Dallas, where the (GGL,) Good Government League in San Antonio, and the (DCRG,) Dallas Citizens for Responsible Government, are largely in control of the election processes, it is almost impossible for a poorly financed candidate to run a successful campaign in Dallas or San Antonio. That the Negroes in Dallas (Weiser deposi-

tion p. 221, 13-23) and the Mexican-Americans in San Antonio (C. E. Garza deposition, p. 629, 23-25, p. 630, 1-8), in order to be put on the ticket, must conform to the ideals and be accepted by the GGL and DCRG.

That there was no justification shown by the Appellant for multi-member districts being created in Dallas and Bexar Counties while Harris County was given single-member districts and that such action resulted in invidious discrimination to the residents of Dallas and Bexar Counties as set out in the First and Fourteenth Amendments to the Constitution of the United States. That the entire action and attitude of the Texas Legislative Redistricting Board amounted to an attempt to delegate their duties and responsibilities owed to the voters of the State of Texas to a clerk for the preparation of the plan (Spellings' deposition p. 62, 1-5) with almost no supervision or control by the Board as set up by the Constitution of the State of Texas and working against a severe time element which made it practically impossible to draft a plan that would fit the guidelines as set up by this Court. That the plan which was drafted was the result of an arbitrary, whimsical and capricious disregard for the citizens and voters of the State of Texas and which failed to meet the requirements of this Court as to population deviation and with no reasonable justification for setting up single-member districts in Harris County and multi-member districts in Bexar and Dallas Counties.

CONCLUSION

For the foregoing reasons, hereinabove set out, Appellees respectfully pray that the judgement of the Court below be, in all respects, affirmed.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that a copy of the foregoing Brief of Appellees has, this ..... day of February, 1973, been served upon each counsel of record in this cause in accordance with Rule 33 of this Court, by depositing same in a United States Mail Box, Certified Mail, Return Receipt Requested, with first class postage prepaid, addressed to said counsel at their post office addresses.

J. DOUGLAS MCGUIRE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

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Appellants,

v.

DIANA REGESTER, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

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In The

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On Appeal From The United States District Court
For The Western District Of Texas

REPLY BRIEF FOR APPELLANTS

REPLY BRIEF FOR APPELLANTS

It is virtually impossible for Appellants to respond to each and every argument advanced in the six briefs (including one amicus) filed in support of the judgment below. That most contain factual assertions not supported by the record is obvious from a spot check of their references thereto,[1] and Appellants will not burden this Court with a

[1] For example, the brief filed on behalf of Dr. George Willeford *et al* asserts, at p. 37 n.16, that Robert Spellings, who participated in drawing the House plan, "did not recall 'preserving county lines' when asked about his guidelines, though he named others (Spellings Dep. 76)." But the referenced testimony (8 App. 2294) clearly reveals that Spellings was being asked about

the "guidelines you were instructed to follow in drafting of the map, — we are talking about the *senatorial* map?" There is no provision of the Texas Constitution similar to Article III, Section 26, which requires the preservation of county lines in senatorial districting. According to the Amicus Brief, Mutscher is said to have "confessed himself 'baffled' at the seeming irrationality of the plan (*id.*, [Mutscher Dep.] 29)." Amicus Brief p. 14. An examination of the reference (8 App. 2416) clearly reveals that the witness was referring to the Senate plan (see *id.* at 2420), and that his only objections to the House plan was that he felt it was against the wishes of the House members and unnecessarily paired incumbents against each other (*id.* at 2429-30). These are common errors found in Appellees' record references: attributing testimony as to the Senate plan to the House plan, the only plan in question on this appeal.

For the proposition that the Board "members troubled themselves little to learn each others' views" the Amicus points to p. 18 of Martin's Deposition. At that page (6 App. 1579) Martin testified:

> "I consulted with other members of the Board, the other four of them, informally. I believe all of them visited my office on one occasion or the other, and I visited in the office of, I believe, all of the other members with the exception of the Speaker, and we had various telephone conversations, and the great bulk of the work was done by staff members. . . ."
>
> Q "You say, then, as I understand it, that you consulted with three out of the four other Board members . . ."
>
> A *"I consulted with all of them.* I limited it to the Speaker. The Speaker came to see me, I believe, on two occasions. I did not visit his office. In other words, we exchanged visits between offices, and if I misled you, I am sorry. I went to all of them's offices with the exception of the Speaker's Office. I don't recall going there. I might have, but I don't recall it right now." (emphasis added throughout unless otherwise indicated).

The Bernal Brief asserts that the Board made no use of the plan adopted by the legislature and held deficient in *Smith* v. *Craddick*. Bernal Brief p. 6. To the contrary, Mr. Spellings testified that in drawing the plan, when he got to certain urban areas and it was necessary to split counties, he relied on the Legislative Council as to how to do it since they had helped prepare the prior plan. 8 App. 2249. And Mr. Johnson of the Legislative Council unequivocally testified that in supplying suggestions to Spellings, he used portions of the prior plan that had escaped criticism in *Smith* v. *Craddick*. 6 App. 1878. This, of course, is the practice, frequently indulged in by Appellees, of attributing to the Board as a whole the action or thought-processes of a single member or staff member.

catalog of these unsupported statements. Instead, the purpose of this brief is to identify and reply to the primary legal arguments advanced by Appellees.[2]

I.

THIS COURT HAS JURISDICTION OF THIS APPEAL UNDER 28 U.S.C. § 1253; THE THREE-JUDGE COURT BELOW WAS PROPERLY CONVENED; AND THE ORDER REDISTRICTING BEXAR AND DALLAS COUNTIES HAS A STATEWIDE IMPACT

Appellees contend that this Court lacks jurisdiction under 28 U.S.C. § 1253,[3] citing primarily *Skolnick* v. *Board of Commissioners,* 389 U.S. 26 (1967); *Board of Regents* v. *New Left Education Project,* 404 U.S. 541 (1972); *Gunn* v. *University Committee to End the War,* 399 U.S. 383 (1970); *Ruckelshaus* v. *Chavis,* 403 U.S. 914 (1971); and *Whitcomb* v. *Chavis,* 403 U.S. 124, 138, n.19 (1971).[4] There are actually two separate jurisdictional questions: (1) Does this Court have jurisdiction to consider the redistricting of Bexar County and Dallas County into single-member districts? and (2) Does this Court have jurisdiction to consider the judgment of the Court below that the redistricting plan for the entire State for the Texas House of Representatives violates the Equal Protection Clause of the Fourteenth Amendment? These two questions will be considered separately.

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[2] For convenience, when this brief refers to certain arguments having been made by "the Appellees", Appellant merely means that one or more, but not necessarily all, of the Appellees have made the same. Where pertinent, the particular party making the assertion is identified by reference to that party's brief.

[3] Appellants did not argue the jurisdictional issue in their original brief, as this Court noted probable jurisdiction on October 10, 1972, in spite of the fact that the appellees had urged the Court to dismiss for lack of jurisdiction.

[4] Willeford Brief at 40-45; Regester Brief at .....

A. This Court Has Jurisdiction to Consider the Appeal from the Injunction Ordering Single-Member Districts for Bexar County and Dallas County.

1. *Appellees incorrectly state the law.*

Appellees' arguments, simply stated, are that the order of the court below redistricting Bexar County and Dallas County into single-member districts was of only "local" as opposed to "statewide" impact, and that, even though the three-judge court was properly convened, this Court lacks jurisdiction if the *order* of the three-judge court has less than "statewide" impact.[5] In this regard appellees rely primarily upon *Board of Regents* v. *New Left Education Project, supra.*[6] There the Court ruled that a three-judge court had been improperly convened, because the challenged rules of the Board of Regents applied only on the campuses of three of the twenty-three four-year State colleges and universities of the State of Texas, and were therefore "local" rather than "statewide" regulations. 404 U.S. at 543-44. The Court relied upon *Moody* v. *Flowers,* 387 U.S. 97 (1967), where it was held that a three-judge court was improperly convened to consider the districting scheme for electing members of the Houston, Alabama, County Board of Revenue and Control. In *Moody* v. *Flowers,* this Court stated the rule defining its jurisdiction under 28 U.S.C. § 1253 as follows:

> "This Court has jurisdiction of these direct appeals under 28 U.S.C. § 1253 only if the respective actions were 'required . . . to be heard and determined by a district court of three judges.' Section 2281 of 28 U.S.C. requires that a three-judge court be convened in any case in which a preliminary or permanent injunction

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[5] Willeford Brief at 42-43.

[6] *Ibid;* Regester Brief at .....

is sought to restrain 'the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute. . . .' The purpose of § 2281 is 'to prevent a single federal judge from being able to paralyze totally the operation of an entire regulatory scheme . . . by issuance of a broad injunctive order' (Kennedy v. Mendoza-Martinez, 372 U.S. 144, 154, 9 L.Ed.2d 644, 652, 83 S.Ct.554), and to provide 'procedural protection against an improvident statewide doom by a federal court of a state's legislative policy.' Phillips v. United States, 312 U.S. 246, 251, 85 L.Ed.2d 800, 805, 61 S.Ct. 480. In order for § 2281 to come into play the plaintiffs must seek to enjoin state statutes 'by whatever method they may be adopted, to which a State gives her sanction. . . .' American Federation of Labor v. Watson, 327 U.S. 582, 592-593, 90 L.Ed. 873, 880, 66 S.Ct. 761.

"The Court has consistently construed the section as authorizing a three-judge court not merely because a state statute is involved but only when a state statute of general and statewide application is sought to be enjoined." 387 U.S. at 101.

The Republican Appellees contend that, under the rationale of *Moody* v. *Flowers,* even though they and the other plaintiffs *challenged* the entire State redistricting scheme embodied in a statute of general and statewide application,[7] the *order* of a three-judge court determines jurisdiction in this Court, and that an order that has "local" rather than

---

[7] Plaintiff Curtis Graves moved to sever his case on grounds that he had challenged only senatorial districting of Harris County, and asserted that the convening of a three-judge court was improper. The court denied Graves' motion, saying: "we conclude that the plaintiff is challenging a state statute of general application throughout the state and is then seeking to *remedy* by injunction one county's apportionment scheme." (A.Jur.S. at 7A) (emphasis is the court's).

"statewide" *impact* will not sustain this Court's jurisdiction.[8]

Appellees confuse the requirements of two separate and distinct jurisdictional statutes. The propriety of convening a three-judge court is determined by 28 U.S. § 2281;[9] the jurisdiction of the Supreme Court of a direct appeal is determined by 28 U.S.C. § 1253,[10] which allows a direct appeal "from an order granting or denying . . . an injunction" in a case that must be heard by a three-judge court. This Court has jurisdiction if (1) a three-judge court was properly convened and (2) the appealing party was either enjoined or was denied injunctive relief.

Appellees erroneously argue that the State may not appeal from an injunction whose *impact* is local, without regard to the issue of whether a three-judge court was properly convened. Appellees' error is demonstrated by their misplaced reliance on *Skolnick* v. *Board of Commissioners,* 389 U.S. 26 (1967), which Appellee Willeford discusses as follows:

> "That this Court has no jurisdiction when the order of the District Court has only local impact was re-

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[8] Willeford Brief at 42-43.

[9] 28 U.S.C. § 2281 states that: "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

[10] 28 U.S.C. § 1253 states that: "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

affirmed in *Skolnick* v. *Board of Commissioners,* 389 U.S. 26 (1967). In that case an appeal was taken from an order by a three-judge court denying an injunction of that portion of a statewide judicial apportionment that affected Cook County, Illinois. See *Skolnick* v. *Kerner,* 260 F.Supp. 318 (N.D. Ill. 1966). The claim in the lower court was that the scheme debased the votes of racial and religious minorities in Cook County. The three-judge court denied relief; on appeal this Court vacated and remanded the order of the lower court, citing *Moody* v. *Flowers.*"[11]

In fact, there were two completely separate *Skolnick* cases. *Skolnick* v. *Kerner,* 260 F.Supp. 318 (N.D. Ill. 1966), did involve a challenge to the Cook County, Illinois portion of a state-wide judicial districting scheme. This Court did *not,* as in *Moody* v. *Flowers,* vacate the order of the district court and remand for entry of a fresh decree to allow appeal to the court of appeals, but instead, without referring to *Moody* v. *Flowers,* merely stated in a *per curiam* opinion that "[t]he motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question." *Skolnick* v. *Kerner,* 387 U.S. 91 (1967).

The second *Skolnick* case, as revealed in the opinion of the Seventh Circuit following the appeal of that second case to this Court, involved a separate and distinct challenge to the districting of Cook County, Illinois for election of the members of the Cook County Board of Commissioners.[12] This second *Skolnick* case had been brought before a three-judge court that was *improperly convened,*

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[11] Willeford Brief at 43.

[12] The district court opinion in the second *Skolnick* case was apparently unreported as there is no citation to the district court opinion in either this Court's opinion, *Skolnick* v. *Board of Commissioners,* 389 U.S. 26 (1967), or in the subsequent opinion of the Court of Appeals, *Skolnick* v. *Board of Commissioners,* 435 F.2d 361 (7th Cir. 1970).

as it involved, just as did *Moody* v. *Flowers, supra,* a challenge to the districting of a *local* governing board. It was this second, *local Skolnick* case in which the Supreme Court held that it had no jurisdiction of the appeal:

> "The judgment of the District Court is vacated and the cause is remanded in order that the District Court may enter a fresh decree from which appellant may, if he wishes, perfect a timely appeal to the Court of Appeals. Moody v. Flowers, 387 U.S. 97, 18 L.Ed. 2d 643, 87 S.Ct. 1544." *Skolnick* v. *Board of Commissioners,* 389 U.S. 26 (1967) (per curiam).

The remainder of the cases cited by the Appellees as supporting a lack of jurisdiction may be divided into two categories: (1) those holding that a three-judge court was improperly convened because the pleadings failed to challenge a statute or regulation of statewide application[13] and (2) those holding that this Court has no jurisdiction where the three-judge court did not enter an order either enjoining or denying injunctive relief to the appellant.[14]

The three-judge court here was properly convened (Appellees do not, and cannot, argue otherwise; their challenge was of a statute of statewide application, redistricting the entire State of Texas, and was additionally an expression of State policy), and the three-judge court did enter an injunction against Appellants. This Court therefore has jurisdiction with regard to the ruling concerning Dallas and Bexar Counties under 28 U.S.C. § 1253.

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[13] *Board of Regents* v. *New Left Education Project,* 404 U.S. 541 (1972); *Hutcherson* v. *Lehtin,* 399 U.S. 522 (1970).

[14] *Whitcomb* v. *Chavis,* 403 U.S. 914 (1971); *Bolton* v. *Doe,* 402 U.S. 936 (1971); *Smith* v. *Garza,* 401 U.S. 1006 (1971); *McCann* v. *Babbitz,* 400 U.S. 1 (1970); *Gunn* v. *University Committee To End the War,* 399 U.S. 383 (1970); *Dial* v. *Fontaine,* 399 U.S. 521 (1970); and *Mitchell* v. *Donovan,* 398 U.S. 427 (1970).

2. *The injunction ordering redistricting of Dallas and Bexar Counties has a "statewide impact."*

Though Appellees are in error in contending that the propriety of convening a three-judge court depends on the scope of the relief granted rather than the scope of the relief sought, this Court would have jurisdiction even if Appellees were correct: the injunction ordering the redistricting of Bexar and Dallas Counties has a "statewide" impact. The officials who would have been elected in Bexar and Dallas Counties under the challenged districting plan would have been State legislators and would have comprised approximately one-fifth of the total membership of the State House of Representatives.

The officials elected under the challenged districting scheme in *Moody* v. *Flowers, supra,* were clearly merely county officials whose powers were limited to the area of Houston County, Alabama.[15] *Moody* v. *Flowers* is therefore distinguishable from the instant case, which concerns the validity of a Statewide districting enactment of the Legislative Redistricting Board (hereinafter the "Board"), a quasi-legislative entity established by the Constitution of the State of Texas, Article III, Section 28 (A. Jur. S. 175E-176E), and authorized to redistrict the entire State of Texas upon failure of the State Legislature to enact a valid redistricting staute. The actions of the court below, in striking down the enactment of the Board, radically changed the manner of electing Representatives to the House of Representatives of the Texas Legislature from Dallas and Bexar Counties, which contain, respectively, populations of

[15] "[T]he constitutional attack was directed to a state statute dealing with matters of local concern — the apportionment and districting for one county's governing board. The statute is not a statute of statewide application, but relates solely to the affairs of one county in the State." Moody v. Flowers, 387 U.S. 97, 102 (1967).

1,327,000 people and 830,000 people, electing eighteen and eleven representatives respectively. It cannot be questioned that legislators elected from Bexar and Dallas Counties are State officials, not county officials as in *Moody* v. *Flowers*, and that their powers extend to the entire State of Texas. Any change in the manner by which these State officials are elected therefore must, of necessity, have a "statewide impact." Dallas and Bexar Counties together elect twenty-nine out of the 150 members of the Texas House of Representatives. Changing the manner of election of these representatives therefore must unavoidably have a significant impact on the composition of the lower house of the Texas Legislature, and undoubtedly has an effect on the entire State.[16]

B. This Court has Jurisdiction of the Declaratory Portions of the Judgment of the Court Below Under the Pendent Jurisdiction of This Court.

It need not be decided whether, under current case law, this Court would have jurisdiction of this appeal had the court below granted Appellees no injunctive relief. See, *e.g.*, *Whitcomb* v. *Chavis*, 403 U.S. 914 (1971). The court below having granted injunctive relief, and this Court having jurisdiction over the portion of the case relating to the ordered single-member districts for Bexar County and Dallas County, this Court should also consider the declaratory portion of the order of the court below under the pendent jurisdiction of this Court, because the

[16] If Appellees' argument were carried to its logical conclusion, a three-judge court would never be required to pass on the constitutionality of a state redistricting plan as long as the plan contained at least some ideal districts so that any court-imposed redistricting would extend to less than the entire state and, according to Appellees' point of view, would have less than statewide impact.

findings of the court below that the State had failed to follow a rational plan in redistricting involved both the multi-member district/single-member district issue and the issue of mathematical equality of the populations of the various districts.

It is clear from a reading of the opinion of the court below and from a reading of Appellees' briefs that the decision below was predicated upon a dislike by the court for the procedures of the Board. The court and the Appellees have decided that the actions of the Board do not constitute a rational state policy because of (1) the frequency of Board meetings, (2) the directions given by the Board to its staff, (3) the extent to which staff members made decisions that were ultimately approved by the Board, and (4) the method by which the recommendations of the staff members were adopted and enacted into law by the Board. See Willeford Brief at 4-5, 16-17, 28-31, 34, 36; Bernal Brief at 5-8, 15-17; Regester Brief at 2-3, 4-6. As it was these inquiries into the Board's procedures that were used to determine a lack of a rational State policy, as a basis for both the injunctive and the declaratory relief granted, this Court should decide the entire case at one time, avoiding piecemeal appeals and unnecessary expense to both the appellees and the State of Texas.

This Court recently noted the propriety of exercising its pendent jurisdiction to hear an entire matter under circumstances where a portion of the matter is properly before this Court under 28 U.S.C. § 1253. In *Roe* v. *Wade*, 41 U.S.L.W. 4213, 4216 (January 22, 1973), Mr. Justice Blackmun, in delivering the opinion of the Court, observed that:

> "Our decisions in Mitchell v. Donovan, 398 U.S. 427 (1970), and Gunn v. University Committee, 399 U.S.

> 383 (1970) are to the effect that § 1253 does not authorize an appeal to this Court from the grant or denial of declaratory relief alone. We conclude, nevertheless, that those decisions do not foreclose our review of both the injunctive and declaratory aspects of a case of this kind when it is properly here, as this one is, on appeal under § 1253 from specific denial of injunctive relief, and the arguments as to both aspects are necessarily identical. See Carter v. Jury Commission, 396 U.S. 320 (1970); Florida Lime and Avocado Growers, Inc. v. Jacobson, 362 U.S. 73, 80-81 (1960). It would be destructive of time and energy for all concerned were we to rule otherwise."[17]

It is clear from the opinion of the court below that the arguments as to both the use of multi-member districts and the failure to achieve mathematical equality among legislative districts are essentially the same, *i.e.*, that the State failed to act in a rational manner, and more particularly, that the Board failed to act pursuant to a rational state policy and that its deliberations were not such as to justify judicial abstinence. An examination of the opinion of the court below makes clear that it commingled the multi-member district issue with the population equality issue.[18]

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[17] *Roe* v. *Wade* involved the plaintiffs' appeal from denial of injunctive relief and the defendant's attempted appeal from the grant of declaratory relief. Here it is the same party aggrieved by both the declaratory and injunctive aspects of the three-judge court's order. Here, unlike in *Perez* v. *Ledesma*, 401 U.S. 82 (1971), the issue is whether this Court has jurisdiction to determine all challenges directed at a single statewide statute where it clearly has jurisdiction to review those challenges resulting in injunctive relief. As this Court held in *Florida Lime & Avocado Growers, Inc.* v. *Jacobsen*, 362 U.S. 73, 80 (1960), "in an injunction action challenging a state statute on substantial federal constitutional grounds, a three-judge court is required to be convened and has — just as we have on direct appeal from its action — jurisdiction over *all* claims raised against the statute." (emphasis this Court's).

[18] A. Jur. S. at 19A-21A.

Indeed, it appears that, central to the decision of the court below, and emphasized in the briefs of all of the appellees here, is the premise that the Legislative Redistricting Board (1) is not the legislature (and that the redistricting plan is not entitled to the same consideration by the Court as it would be entitled to had it been drawn by the legislature),[19] and (2) acted in an arbitrary and irresponsible manner, so that the redistricting plan established by the Board is not entitled to consideration by this Court as a rational state policy.[20] In the interest of fairness to the parties and of judicial economy, this Court should consider both the order of the court redistricting Bexar and Dallas Counties into single-member districts and the declaratory judgment of the court that the entire plan for the State of Texas is unconstitutional. To do otherwise will require the litigants to litigate the same issue, *i.e.*, the rationality of the actions of the Legislative Redistricting Board, in both this Court and in either the United States Court of Appeals for the Fifth Circuit, in the event that the declaratory aspects of this appeal are dismissed and the Court vacates and remands the same to the district court for entry of a fresh decree, as is the usual practice, or in a subsequent appeal to this Court after the entry of an injunction by the court below, should the Legislature not act or should any plan adopted by it not satisfy the three judges of that court.

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[19] A. Jur. S. at 19A-20A.

[20] A. Jur. S. at 14A, 19A-21A; Willeford Brief at 4-5, 16-17, 28-31, 34-36; Regester Brief at 2-4, 4-6; Bernal Brief at 5-8, 14-17; Amicus Brief at 9-14.

II.

THE COURT BELOW IMPROPERLY BASED ITS DECISION ON THE PROCEDURES BY WHICH THE LEGISLATIVE REDISTRICTING BOARD ADOPTED THE DISTRICTING PLAN, RATHER THAN BY FAIRLY EVALUATING THE PLAN ON ITS OWN MERITS.

It is clear from a reading of the opinion of the court below that it proceeded under a presumption that the redistricting plan was invalid, or at least very suspect, solely because of the procedures that the court found to have been employed by the Legislative Redistricting Board in adopting the plan. (A.Jur.S. 14A, 19A-21A, 31A) The opinion below was only secondarily based upon a consideration of the *effect* of the plan. (A.Jur.S. 42A) This concern with procedure rather than substance was involved both in the court's ruling on the single-member/multi-member district issue and in its ruling on the one man-one vote equal protection issue. Bound up with the court's concern with the procedures of the Board was its apparent opinion that the Board's redistricting plan was not entitled to the same presumption of validity that would attach to a redistricting statute enacted by the Legislature, and the court below candidly stated its views in this regard. (A. Jur.S. 19A-20A)

The court fails to explain why it feels that the official acts of the Board, composed of five of Texas' highest elected officials, are not to be accorded the same consideration as would be the official acts of the State Legislature. Indeed, the court cites no authority at all in support of its bizarre position. Appellees supply none. Further, the court below held that the plan is not presumptively valid, because the Board initially declined to redistrict the Texas House of Representatives (the Board believed that it

lacked jurisdiction to do so, as the Legislature had enacted a redistricting statute for the lower house), saying:

> "First, whatever 'tolerance' might conceivably attach to a State's explanation of deviations from a population ideal cannot reasonably or appropriately attach to the actions of a redistricting board which acted on the House of Representatives' plan only pursuant to a mandamus, *Mauzy* v. *Redistricting Board, supra,* and which proceeded to draw its conclusions in the manner just sketched." (A.Jur.S. at 21A)

Finally, the court summarized its disdain for the procedures followed by the Board, as it concluded:

> ". . . We have serious doubts that this board did the sort of deliberative job contemplated by *Reynolds* as worthy of judicial abstinence." (A.Jur.S. at 21A)

The court below based its characterization of the Board's "job" largely upon such minutiae as (1) the number of meetings of the Board, (2) the number of public hearings held by the Board, (3) the amount of responsibility delegated to the Board staff, (4) the extent to which staff recommendations were adopted by the Board, (5) a lack of "legislative guidance", (6) a lack of debate of the single-member/multi-member district issue, (7) the number of members of the Board who signed the plan,[21] and (8) an

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[21] The court below and the Appellees in their briefs erroneously leave the impression that the House plan was signed by only three members of the Board. While it is true that only Martin, Calvert, and Barnes signed *both* the House and Senate plans, Armstrong signed the House plan along with the other three (6 App. 1851-52). In any event, even if three instead of four members had signed the House plan, that was all that was required under Article III, Section 28 of the Texas Constitution, and the plan is not subject to criticism for that reason any more than would an Act of Congress because it had been passed by only a bare majority.

alleged lack of standards by which the legislative district lines were drawn. (A.Jur.S. 14A, 20A)

The court below even suggests that the Board erred in relying on testimony and communications from Harris County indicating a preference for single-member districts, saying:

> "[i]t appears to this Court that if a State elects to use the 'wishes of the people' to treat metropolitan areas differently and unequally, then it is under some obligation to do a more thorough job of investigating the real 'wishes of the people' than was done by the Redistricting Board." (A.Jur.S. at 31A)

In short, as was pointed out in Judge Wood's dissent (A.Jur.S. at 102A-103A), the court strayed far into a consideration of the mechanics by which the plan was produced, rather than concerning itself only with the plan, its effects and the intentions of those who drew and adopted it.[22]

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[22] While the record in this case illustrates the difficulty of divining the mental processes of a legislative body, its members and staff, it is clear that all hands involved here, whatever their disagreements as to the means, aimed for and intended one end: a fair plan with precise population equality. Martin instructed the staff to hold the "percent of deviation to zero, if possible." (6 App. 1596). Mutcher thought that "evenness in numbers of people represented" was "the number one feature." (8 App. 2403). Barnes instructed staff member Spellings to get "the most constitutional map that we could." (8 App. 2229). Staff member Johnson testified that "a prime consideration was population, or the consideration to try to hit it as closely as possible . . . ." (6 App. 1878). One of the Appellees suggests that a brief comment made by Mr. Calvert during his deposition indicates that the Board was seeking something less than perfection. Willeford Brief 36. After Mr. Calvert testified that in his consideration of a redistricting plan he attempted "to make these districts as nearly equal as you could in regards to population" and that he was "guided, then, with simply making them as near equal as you could by the facts supplied by the people that had the information," (7 App. 1977), he did state that when the final

The emphasis of the court below on the procedures of the Board raises grave and fundamental questions concerning the nature of federalism. No federal court would for a moment consider declaring an Act of Congress invalid on the grounds that the House or Senate committee in which the legislation had been drafted had allowed the committee staff to do most of the actual drafting of the bill, nor would an Act of Congress be invalidated on the grounds that there had not been adequate debate on the floor of the House or Senate, nor even that the legislation was unwise. Yet the court below engaged in just those sorts of inquiries. If it is legitimate for a federal court to invalidate, on procedural grounds, a redistricting plan duly enacted by a legislative body, in accordance with the Texas Constitution, it can be no less legitimate for a federal court to invalidate other acts of the state legislatures on the same sorts of procedural grounds.

Yet, it is well established that the federal courts will not inquire into the method by which facially constitutional legislation has been enacted. *E.g., Fletcher* v. *Peck,* 10 U.S. (6 Cranch) 87 (1810); *Holt* v. *City of Richmond,* 459 F.2d 1093, 1098-99 (4th Cir. 1972), *cert. denied,* 92 S.Ct. 2510; *c. f. Bush* v. *Martin,* 251 F.Supp. 484, 515 (S.D.Tex. 1966). This Court has also recently reaffirmed the well-established

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plan and deviation figures were presented to him on the day that the plan was adopted:

> "I looked at the figures, and as I recall they weren't too far off or they may have varied. What was a 5% — It was not supposed to be more than 5% off of the average, whatever it was. Some districts were a little above it and some were a little below." (7 App. 1978)

Placed in its proper context, it is difficult to find in the above remarks by one Board member, a clue that would lead one to conclude that either the Board as a whole or Mr. Calvert himself started out aiming for some *de minimus* range of deviations. Having relied upon the Attorney General's instructing the staff to come up with a constitutional plan, Mr. Calvert was simply willing to approve a final product that had some minor deviations.

rule that it will not inquire into the wisdom of legislative enactments. In *James* v. *Strange,* 407 U.S. 128, ..., 92 S.Ct. 2027, ... 32 L.Ed.2d 600, 606 (1972), this Court held that:

> "We do not inquire whether this statute is wise, or desirable or 'whether it is based on assumptions scientifically substantiated.' Roth v. United States, 354 U.S. 476 (1957) (Harlan, J., concurring). Misguided laws may nonetheless be constitutional."

Perhaps in recognition that it could not legitimately base its opinion upon a procedural inquiry into the legislative process, the court below asserted that the redistricting plan was not legislation, saying "[t]he plan before the Court was not a product of legislative action, but of the action of a board of five members, only one of whom is a member of the legislature." (A.Jur.S. 19A-20A) The question of whether the Legislature Redistricting Board is a "legislative" body is, of course, not answered by inquiring whether its members are also members of the state legislature. The Board is a creature of the Texas Constitution and is endowed with legislative powers. The only function of the Board is to redistrict the State of Texas, and this power devolves upon the Board only upon failure of the Texas Legislature to enact a re-apportionment statute at its first regular session following publication of the decennial census. Tex. Const. art. III, § 28 (A.Jur.S. 175E-176E). The only function of the Board is therefore to carry out one of the duties of the Texas Legislature when the legislature has failed to act. Functionally, therefore, as the Board acts in place of the Texas Legislature, it is performing a "legislative" function and is a "legislative body" by the terms of the Texas Constitution.

Moreover, the enactments of the Board, when "executed [by three or more members of the Board] and filed with the

[Texas] Secretary of State, shall have the force and effect of law." (A.Jur.S. 176E) The enactments of the Board being "law", the Board is a law-maker, or "legislative body". The court below erred in holding otherwise, and its inquiries into the wisdom and fairness of the Board's procedures were also error.

However, even if the court below were correct in considering the procedures by which the plan was produced, its conclusion that the Board did not do a "deliberate job" "worthy of judicial abstinence" (A.Jur.S. 21A) is not supported by the record.

First, the court found a lack of coordination (or "tandem of operations") and a lack of Board guidance of the staff in regard to both constitutional principles and "lesser policy guidelines." (A.Jur.S. 20A) In fact, the late Attorney General, Crawford Martin, made a point of informing the other members of the Board and the Board staff of both (1) constitutional guidelines (including *Whitcomb* v. *Chavis*) and (2) scholarly legal articles dealing with redistricting. (6 App. 1580-81, 1645, 1660-61, 1696-97) In his dual role as Board chairman and legal counsel, Martin also instructed the Board staff to attempt to achieve zero population deviation and to follow the law, as declared by the various redistricting decisions of this Court. (6 App. 1595-96) Rather than providing the staff with no guidance, as the court below found, the Board, through Chairman Martin, maintained liaison with the staff; Martin personally examined partially completed maps of district lines and approved of the crossing of county lines in instances where this became necessary. (6 App. 1597) Martin also instructed the staff to watch for the possible dilution of minority group voting strength. (6 App. 1645-46) Martin personally had conversations with staff member Potter, and Martin's Assistant Attorneys General had conversations with staff

member Spellings and others, to insure that the staff members who drew the redistricting plan understood the principles announced by this Court in previous apportionment cases. (6 App. 1700-01)

Robert Johnson, the Executive Director of the Texas Legislative Council, testified that the Attorney General's staff advised the Board staff that (1) a "prime consideration" was to attempt to achieve precise mathematical equality and (2) crossing of county lines should be kept to a minimum. (6 App. 1878-79)

Staff member Spellings, who drew most of the House redistricting plan, is a licensed attorney, and testified that he was familar with the redistricting opinions written by this Court. (8 App. 2229-30) Spellings, who was employed as an Executive Assistant to Lt. Governor Barnes, a member of the Board, received instructions from Barnes to draw a redistricting plan and to use single-member districts only in Harris County. (8 App. 2227-28) Spellings further testified that Lt. Gov. Barnes wanted him to "draw the most constitutional map that we could." (8 App. 2229)

Secondly, the court below found that "[t]here is ample testimony that the Board was given absolutely no legislative guidance, nor did the Board begin from the legislative discussions that accompanied the earlier apportionment plans for Texas." (A.Jur.S. 20A) The Board, as a quasi-legislative body empowered by the Texas Constitution to enact a redistricting statute into law, is burdened by no legal duty to seek "legislative guidance." The Board was clearly not burdened by any duty to defer to the views of the legislature. The independent nature of the powers of the Board were recently and authoritatively construed by

the Texas Supreme Court in *Mauzy* v. *Legislative Redistricting Board,* 471 S.W.2d 570, 575 (Tex. 1971) (A.Jur.S. 193F), where the Court refused to issue a mandamus requiring the Board to use only single-member districts, saying:

> "The manner in which the Board apportions the state into new districts is *entirely within the judgment and discretion of the Board,* so long as it acts within the limitations imposed by the Constitutions of the State of Texas and of the United States."

Moreover, while the Board was under no duty to follow the apportionment plan previously enacted by the Legislature, neither did the Board completely disregard the Legislature's efforts nor ignore the information which the Legislature had complied, as the court below seems to have implied in its opinion. For example, the Board staff made substantial use of information compiled by the Texas Legislative Council for the use of the Legislature, and even adopted portions of the plan that the Legislature had earlier enacted. (8 App. 2249-50)[23]

The Texas Legislative Council, headed by Executive Director Robert Johnson, provided staff support for the Board, and coordinated its efforts with those of Robert Spellings, who actually drew much of the House plan, and with Attorney General Martin and his staff. Johnson testified that three members of the staff of the Legislative Council, including Assistant Director John Potter, assisted in

[23] The testimony of the Board members is replete with instances of them having sought out and obtained the proposals and viewpoints of numerous legislators. Many legislators appeared before the Board during its public hearings, many had submitted plans to the Board, many had communications with individual Board members, and the Board knew from the prior plan, struck down in *Smith* v. *Craddick,* what the majority of the Legislature wanted.

drafting the House plan. (6 App. 1872, 1875-76) The Legislative Council prepared a number of plans at the request of the Board, prior to preparation of the final plan. (6 App. 1881) A Board member instructed Johnson and the Legislative Council that single-member districts were to be used in Harris County. The statistical information that had been gathered for the use of the Legislature was made available to the Board and its members. (6 App. 1877-78) Statistical information that had been gathered by the Senate Redistricting Committee was also made available to the Board staff. (8 App. 2231)

Finally, the Senate Committee on Congressional, Judicial, and Legislative Districting and its staff provided assistance to the Board after the close of the regular session of the legislature, and provided census information and other data to the members of the Board. (8 App. 2454, 2458-59)

Thirdly, the court below found that the "committee [Board] met for hearings only four times" and "[t]he full board did not even meet to approve the final plan; it was merely passed around." (A.Jur.S. at 20A) In fact, Attorney General Martin testified that the Board met formally five or six times in *public* meetings. (6 App. 1569-70) Although there were no "private *meetings*" of the Board (Art. III, Section 28 of the Texas Constitution requires the presence of three members of the Board for a quorum), there were *numerous* "meetings," "conferences," or "conversations" between both various combinations of Board members and between various Board members and the Board staff. Although not technically "Board meetings," these informal conferences occurred with great frequency, and it was in these conferences that much of the Board members' deliberations were carried out. (6 App. 1578-79, 1589, 1602) The Board members also received and con-

sidered correspondence, telegrams, proposed redistricting maps, and presentations by various interested citizens, in addition to the testimony presented at the four formal hearings. (6 App 1571-72, 1577, 1586) The Board also received proposed redistricting maps from twenty-three State Representatives. (6 App. 1574-76)

III.

THE STATE HAS MET ITS BURDEN OF JUSTIFYING THE POPULATION DEVIATIONS.

Appellants have argued that in the absence of evidence of bad faith — and to the contrary, where the evidence is clear that the redistricting authority was aiming for precise mathematical equality — the State should not have the burden of having to justify each and every departure from absolute mathematical equality, particularly where the State has made a conscientious and good faith effort to comply with (1) its own state constitutional mandates as to contiguity and the preservation of county lines and (2) its legitimate concern for compactness and community of interest.[24] The Appellees have taken the position that it is arithmetic alone — the fact of deviation — which places the burden on the State to explain each and every deviation on the basis of a rational state policy consistently applied. Some of the Appellees devote a considerable portion of their briefs to cataloging the instances where deviations are said to be most flagrant and where the state policy of preserving county lines is said to have been violated. In most instances, the Appellees do not suggest

[24] The testimony of the Board members and staff members makes it abundantly clear that in addition to population equality and the preservation of county lines, compactness, contiguity, and community of interest were also criteria applied in preparing the plan. (8 App. 2230, 2404-05).

how they would have drawn districts differently. The examples which they now cite and challenge the State to explain, apart from Dallas and Bexar Counties, were not explored during the depositions they took of the members and staff of the Legislative Redistricting Board or during trial, and indeed, near the conclusion of the trial, the court below, noting that there had been no testimony as to the population deviation, questioned counsel for one of the Appellees as to whether the latter were attacking the plan on the basis of population deviation. (4 App. 1182). Said counsel responded that such a challenge was being made and that the evidence consisted simply and solely of arithmetic. (*Id.* at 1183). Thus, though Appellees now point to specific counties and districts which they claim the State failed to explain, they did not do this during the trial of the case but instead rested on the fact of deviation alone as requiring the State to explain each and every instance thereof.

It is Appellants' position that no such burden should be placed on the State where the deviations are as small as they are in the Board's plan and where the largest deviations are clearly explained by the Board's attempt to comply with Article III, Section 26 of the Texas Constitution (A.Jur.S. 174E) as interpreted in *Smith* v. *Craddick* (A.Jur.S. 178F-185F). Appellees do not suggest that the Board was ever presented with a plan with smaller deviations and yet in compliance with the State Constitution. They do challenge Appelants' assertion that the plan adopted by the Board contained only one violation of Section 26 of the Texas Constitution.

Appellees persist, as did the court below, in misreading *Smith* v. *Craddick*. In that case, the Texas Supreme Court set out five requirements of Section 26:

"1. Section 26 requires that apportionment be by county and when two or more counties are required to make up a district of proper population, the district lines shall follow county boundaries and the counties shall be contiguous. A county not entitled to its own representative must be joined to contiguous counties so as to achieve a district with the population total entitled to one representative. . . .

• • •

"4. With the nullification of the dictate relative to use of the surplus population (less than enough for a district) of a county which already has one or more representatives allocated thereto, it becomes *permissible* to join a portion of that county (in which the surplus population reside and which is not included in another district within that county) with contiguous area of another county to form a district. *For example,* if a county has 100,000 population, and if a district of 75,000 population is formed wholly within that county, the *county* is given its district, and the area wherein the 25,000 live *may* be joined to a contiguous area.

"5. It is still required that a county receive the member or members to which that county's own population is entitled when the ideal district population is substantially equalled or is exceeded. No exception to this requirement is made by what is said in 4. above. . . ." (A.Jur.S. 182F-183F)

The court below held, and Appellees now insist, that requirement 4. enumerated by the Texas Supreme Court prohibits the surplus population of a county entitled to one or more representatives from being *split* between *two* districts. According to Appellees, the Texas Supreme Court held that the surplus population must go into one and only one district. To the contrary, the Texas Supreme Court did not suggest that requirement 4. which it enunciated had been violated by the plan before it although said plan

(Tex. Rev. Civ. Stat. Ann. art. 195a — 3 (Supp. 1972)). contained at least three instances where a county had been assigned one or more representatives and where that county's surplus population had been divided into *two* districts (*e.g.*, Brazoria County, Tarrant County, Bexar County). Instead, the Texas Supreme Court pointed to the fact that "[e]ighteen counties with less than 74,645 population were divided, and portions of each of those counties were placed in two or more districts" (a violation of requirement 1.) and "[a]lthough Grayson County has a population of 83,225, that *county* was not apportioned a representative as required by Section 26, but a portion of the county was placed in District 14 with Fannin County, and the remaining portion of Grayson was placed in District 60 with counties to the west" (a violation of requirement 5.). The Texas Supreme Court concluded that "Appellees proved conclusively that this statute fails to do what is required by the constitution in those respects discussed in paragraphs 1. and 5. above." (A.Jur.S. 184F).

Appellants respectfully suggest that the court below and the Appellees have misread *Smith* v. *Craddick*. If the Texas Supreme Court had felt that Section 26 prohibited splitting surplus population between two additional districts, it would certainly have pointed to the instances in the plan before it where that was done and would have stated that in that respect the plan attacked violated requirement 4. of Section 26. And if requirement 4. means what Appellants say it means, then the plan adopted by the Board fully complies with *Smith* v. *Craddick* with the one exception of Red River County. There are no instances where a county entitled to at least one representative was not given its own district but was split into two districts in violation of requirement 5., as had been the case of Grayson County in the prior plan. The only instance where a county not

entitled to its own representative was split rather than joined *in toto* with contiguous counties (pursuant to requirement 1.) was the case of Red River County. That departure from state policy was explained. See Appellants' Brief p. 5 n. 4.

When one keeps in mind the fact that Texas has 254 counties, that the Board came up with a plan that cut only 19 county lines (as opposed to 33 in the plan attacked in *Smith* v. *Craddick*) and in which only one county was divided in contravention of Section 26 (as opposed to 18 in the plan attacked in *Smith* v. *Craddick*), it is difficult to see how the Board could be accused of bad faith depredations against state policy. Of the 18 districts which the court below listed as having the largest deviations, 13 were comprised of two or more entire counties where the Board was clearly attempting to comply with requirement 1. laid down by the Texas Supreme Court in *Smith* v. *Craddick*. Of course, in addition to population equality, the desire to keep small counties intact was not the only criteria used by the Board. The record is clear that it also considered compactness, contiguity, and community of interest. Appellees' approach of looking to particular counties to demonstrate districts with plus and minus deviations existing side by side leaves the erroneous implication that isolated modifications could have been made to cure the disparities. The truth, however, is that any modifications made would necessarily affect the remainder of the plan and that, in redistricting into 150 districts a state as large as Texas, assuming the propriety of using its 254 counties as building blocks in the first instance, situations are encountered where surplus population must be joined to contiguous counties and where there are limited choices available. Appellants urge this Court to look at the map of Texas reproduced on page 133C of the Appendix to the Jurisdictional Statement where the Court can readily see that

almost all of the so-called "unexplained deviations" highlighted by the court below and by the Appellees occur in districts which border the state boundaries in East Texas (Districts 1-9, 3-4, 2-12-14, 5-7-8), in South Texas (Districts 59-51-50), and in far West Texas (Districts 71-72). Appellants do not suggest that in every case there were no alternatives to drawing lines in the manner in which the Board did. Certainly El Paso County could have been left intact creating a plus deviation of 3.7% rather than dividing it into two districts with minus deviations of .3% and 1.3%. The City of Lubbock could have been left intact and a district created which totally encircled it instead of dividing the County of Lubbock into two compact and contiguous districts, one with a plus deviation of 1.9% and another with a minus 1.1%. In the case of Bexar County, a decision had to be made as to whether to remove four census tracts to reduce the deviation of its 11-place multi-member district even though this meant increasing the deviation of an adjoining single-member district.[25] Appellees would require the State to explain in these instances why it deemed population equality more important than county integrity, compactness of territory more important than city integrity, and equality of representation in an 11-member district

[25] Mr. Spellings testified that the reason the four census tracts in question were removed from Bexar County and placed in a contiguous single-member district was because they were "rural areas" and have more of a "community of interest" with the adjoining district. (8 App. 2277). Indeed, one of the Appellees suggests that since the Board used census blocks (smaller building blocks than census tracts) in districting Jefferson County (Districts 5 and 8), the Board had very precise tools with which to reduce the deviations found in the plan. Bernal Brief 25. While it is not clear how the Board happened to have census block figures available for Jefferson County, the evidence is undisputed that the Board did not generally have available other census block figures. (6 App. at 1896). The unavailability of census block information readily explains the difficulty in achieving smaller deviations in the single member districts of Harris County in which the population of one census block frequently exceeds the population of entire counties elsewhere in the State.

more important that equality of representation in a single-member district. It is respectfully submitted that the rationality of what was done is apparent from what Appellees suggest could have been done. And the issue is whether the lines were drawn in a rational manner, not whether they could have been drawn in a more rational manner.

If population equality is the only criteria which a state may use in redistricting the legislature, then *Reynolds* v. *Sims* does not mean what it says. If the State is permitted to consider other rational policies (and we intentionally use the plural), then there will always be certain inconsistencies which cannot be explained on the basis of "rationales . . . applied systematically throughout the state." (A.Jur.S. 22A). The use of multiple rationales and criteria and the fact that no situation confronted by the redistrictor in drawing his map is precisely like anything confronted before, means that values must be balanced as to each particular situation and choices made as to which way to draw the line. To require the State to justify each and every choice would require either that there be no choice (other than the kind of computer to use) or that some method be devised to record the mental processes of the persons or groups drawing the lines. For even if the deviations were only fractions of percentage points, someone could always require the State to explain why a certain census block with a population of 12 was not put into one district rather than another.[26]

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[26] Indeed, one of the Appellees suggests that since census blocks (subdivisions of census tracts) were used in the redistricting of Jefferson County (Districts 5 and 8), the State of Texas had more precise tools than census tracts with which to achieve less deviation. (Bernal Brief at 25). Apart from Jefferson County, however, the undisputed testimony was that census block figures were not available to the staff of the Board. (6 App. 1896). The unavailability of census block data readily explains the much criticized deviations among the single-member districts of Harris County where census tracts, the smallest building blocks available to the Board, frequently contain more people than entire counties in many parts of Texas.

IV.

THE COMBINATION OF SINGLE-MEMBER LEGISLATIVE DISTRICTS IN HARRIS COUNTY AND MULTI-MEMBER LEGISLATIVE DISTRICTS IN OTHER METROPOLITAN AREAS DOES NOT DENY EQUAL PROTECTION.

Appellees seek to support the judgment of the court below on the ground that the apportionment plan, by implementing single-member districts in Houston and multi-member districts in the other metropolitan areas, without a "compelling state interest" for doing so, discriminates against candidates and political associations because the cost of running for office in a multi-member district is greater than the cost of running in a single-member district.[27]

A. The Differing Treatment of Harris County Was Not Found to be Unconstitutional by the Court Below.

The court below concluded as the bases for its decision "that the apportionment plan for the State of Texas is unconstitutional as unjustifiably remote from the ideal of 'one man, one vote', and that the multi-member districting schemes for the House of Representatives as they relate specifically to Dallas and Bexar Counties are unconstitutional in that they dilute the votes of racial minorities." (A.Jur.S. 60A). The court devoted portions of Part I and the entirety of Part II of its opinion to the combination of single-member districts in Harris County and multi-member districts in other areas but concluded only that

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[27] The court below recognized, but ignored, that different treatment is not necessarily invidiously discriminatory treatment when it stated:

> "While the Fourteenth Amendment does not prohibit all unequal treatment of individuals or groups and does permit rough accommodations, it does prohibit 'invidious discrimination.'" (A.Jur.S. 26A).

because of the combination, "the use of multi-member districts in Texas cities *is subject to serious constitutional question* on the bases of the First Amendment, the Due Process clause and the Equal Protection clause." (A.Jur.S. 35A) (Emphasis added).[28] The court did not find the mix of multi-member and single-member districts in different metropolitan areas unconstitutional, but advised the State of Texas that such mix in the future would be subjected to close scrutiny by the court.

The court below first raised this point in Part I of the opinion in connection with its discussion of the population deviations. After concluding that the deviations required justification, and finding none acceptable to it, the court concluded that Texas had no rational state policy that "resulted in the population deviations previously discussed *and in the disparate treatments of metropolitan areas.*" (A.Jur.S. 19A).[29] The court pointed out that in *Kilgarlin*[30]

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[28] The court below began Part II of its opinion with the following language:

> "Because of our holding under *Reynolds*, we are not compelled to decide other questions raised by the plaintiffs pertaining to the entire State of Texas, although we do feel compelled to reach conclusions later in the opinion with regard to specific metropolitan areas [Dallas and Bexar Counties]."

Because of this obvious disclaimer regarding the court's recommendations concerning the use of multi-member districts, appellants did not raise this point in their Brief for Appellants except to the extent that the court's discussion of multi-member districts further evidences that it was not so much the plan that was faulted, but the method by which the plan was adopted.

[29] The court's description of the use of single-member districts in Harris County and multi-member districts in other counties escalated from "disparate" and "different" (A.Jur.S. 19A-21A), to "haphazard combination" and "irrationality" (A.Jur.S. 22A), to "different and unequal" and "disparate and unequal" (A.Jur.S. 35A), but never reached the point of "invidious discrimination."

[30] In the plan under consideration in *Kilgarlin*, Harris County had been subdivided into three multi-member districts which conformed to the three Congressional Districts within Harris County. Dallas County and the other metropolitan areas were county-wide multi-member districts.

the state had "assured" the court that the State's policy "limits the size of any multi-member district to fifteen Representatives", and in the current apportionment plan this "policy" was abandoned without explanation. Thus the combination became, in the opinion of the court, a "haphazard combination of single and multi-member districts"; and "irrationality" There after, the court proceeded to Part II of the opinion, repeating much the same reasoning as in Part I with regard to multi-member district and, as a guide for the Legislature in its court-directed apportionment effort, warned that the use of multi-member districts in Texas is subject to serious constitutional question. But the judgment below was based upon deviation as to the entire plan and dilution as to Dallas and Bexar Counties (unconstitutional effects on voters), not discrimination between Dallas and Harris Counties as to candidates

Appellants submit that in view of the gratuitous nature of the trial court's pronouncement and the speculative evidence on which it was based, this Court should not use this case as a vehicle for deciding whether a state must demonstrate a "compelling state interest" before it can constitutionally use both single- and multi-member districts in its legislative districting scheme

B. The Proper Test Is Whether There is a Rational Basis, Not a Compelling State Interest, For the Combination of Single- and Multi-Member Districts.

If this Court feels compelled to pass on the issue discussed here, Appellants submit that the decision of this Court in *Bullock* v. *Carter,* 405 U.S. 134, 92 S.Ct. 849 (1972), does not require Texas to demonstrate that it was "necessary" to use single-member districts in Harris County and multi-member districts in other metropolitan counties, but only that such mix was "not irrational." In assessing the

constitutionality of Texas' filing fees for primary elections, this Court in *Carter* held the State to a more rigid standard than that usually applied in Equal Protection cases involving restrictions on candidacy because the Court found that the filing fee system had "a real and appreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate . . ." 92 S.Ct. at 856. The filing fee system limited a candidate's access to the ballot and a voter's choice of candidates on the basis of wealth. It could unquestionably affect the outcome of particular elections where competing groups of voters in a given community had different financial resources. The alternative method of petitioning for a place on the ballot for the general election required abandonment of party affiliation.

The most obvious distinction between filing fees and multi-member districts is that the latter do not limit assess of candidates or choice of voters and the alternative of a candidate to not running at all (because of fear of campaign expense) is party affiliation and particularly running on a slate. There is admittedly, in any elective contest where campaigning is privately financed, a built-in bias against the poor. All things being equal, the candidate with more money has a better chance. Increasing the size (in terms of population or geography) of the district — be it single- or multi-member — amplifies the bias. But this bias is endemic in the present system of elections, and this Court has never intimated that multi-member or large single-member districts are invalid *per se,* or that a State must demonstrate a "compelling state interest" for using such districts. To the contrary, this Court has noted that "when the validity of the multi-member district, as such was squarely presented, we held that such a district is not *per se* illegal under the Equal Protection clause."

Whitcomb v. *Chavis,* 402 U.S. 124, 142 (1971). Moreover, this Court has consistently approved, and even suggested, the use of multi-member districts in combination with single-member districts. Indeed, in *Whitcomb,* this Court disapproved the lower court's failure to explain on supportable grounds why it did not create single-member districts in the Marion County ghetto and leave the county otherwise intact as a multi-member district.

The court below recognized that Texas did not have to demonstrate a "compeling state interest" for its use *vel non* of multi-member districts. Indeed, the trial court refused to hold that a State has the burden of justifying any and all combinations of multi-member and single-member districts. What the court found invidious was the use of multi-member districts in all metropolitan areas except Harris County: a discrimination between the candidates of Dallas County and the candidates of Harris County, one based on geography, not demography or wealth. It was the different treatment of candidates in Harris County and candidates in other metropolitan counties that the court required Texas to demonstrate was made necessary by a compelling state interest. *Bullock* v. *Carter* does not support this result. The distinction drawn by Texas is not between the rich and the poor. The distinction is between all candidates rich and poor alike, in Harris County and all candidates, rich and poor alike, in other metropolitan counties, candidates who in no event run against each other. Theoretically, a poor candidate in Houston may have a better chance than a candidate of equal resources in Dallas. But these two candidates are not running against each other, and the Dallas candidate's chance of winning is not improved by requiring that Houston be made a multi-member district. Any difference of treatment accorded candidates is based on where they live and not their financial resources. If the use of multi-

member districts in all metropolitan areas, or single-member districts in all metropolian areas, does not discriminate among candidates on the basis of wealth, then the use of multi-member districts in some areas and single-member districts in others is not a discrimination based on wealth. It is doubtful that multi-member districts have the same "real and appreciable impact on the exercise of the franchise" as do filing fees. But whatever impact they have, the mere combination of such districts in some communities with single-member districts in other communities does not cause such impact to be related to the resources of the voters supporting a particular candidate. Houston and Dallas are treated differently, but the difference, not being related to the financial resources of either's voters or candidates, need not be justified by a "compelling state interest." It is enough that the different treatment of different geographical areas not be irrational.

C. The State of Texas Has Demonstrated That the Use of Single-Member Districts in Harris County and Multi-Member Districts in Other Metropolitan Counties Was Not Irrational.

Texas had had a history of uniform use of multi-member districts in its urban areas (although Houston had been divided into three multi-member districts in 1966). In 1971 the Legislative Redistricting Board followed the lead of the Legislature and adopted a new, innovative single-member district plan for Harris County (Houston) in response to what the Board, in its wisdom and in the exercise of its discretion, understood to be the wishes of the citizens of Harris County and in reaction to the favorable response of the citizens to the previous system of three districts. The Board simultaneously, in response to what it understood to be the wishes of the people of other urban areas of Texas, retained the traditional multi-member districts for those areas. The court below held

this innovation to be a denial of equal protection to the citizens of Dallas and Bexar Counties, apparently wholly on the premise that these counties are urban areas similar to Houston and should therefore be treated in an identical manner to Houston. And since this Court has held that the use of multi-member districts is not *per se* invidious discrimination (*Whitcomb* v. *Chavis*), what the court below must have found objectionable was the innovative use of single-member districts in Harris County. The rationale of the court below apparently is that any innovation in legislative districting must be implemented simultaneously throughout a state or not implemented at all. It is further apparent that the court below will not allow any experimentation in the political process, and will regard any variations in approach as invidiously discriminatory.

The reasoning of the court below simply does not support its conclusion that the combination of single-member districts in Harris County and multi-member districts in other metropolitan areas constitutes unequal and discriminatory treatment, nor does the combination suggest a "lack of rationality," a "crazy quilt" or a "haphazard combination." The court below incorrectly analyzed and rejected the reasons why Texas chose to treat Harris County differently.

1. *The Former Fifteen Member Limitation in Size of Multi-Member Districts Was Not a "Policy" Binding Upon the State.*

Appellees find particular comfort in the court's repeated criticism of the State's "unexplained abandonment" of the "state policy" set forth in *Kilgarlin* wherein the defendants "assured" the three-judge court that the size of any multi-member district would be limited to fifteen Representatives and that any county that attained a population of a million

or more would be subdivided for Representative districts, upon which assurance the three-judge court relied in approving the "disparate" treatment between Harris and Dallas Counties in the 1965 apportionment bill.

Appellees and the court below *assume* that there was a "state policy," *assume* that "disparate" treatment was involved to an extent that justification was necessary, *assume* that defendants "assured" the court of this continuing plan, and *conclude,* therefore, that the State must now explain its abandonment of this plan. An examination of the underlying rationale for the limitation in size of multi-member districts in the apportionment plan under consideration in *Kilgarlin,* demonstrates that the limitation was a practical approach to effectuate the preference of the Committee that drafted the plan. The Committee felt that multi-member districts should be somewhat limited in size to accommodate voting machines. Harris County, the largest area to be multi-member districted, accommodated a limitation in that it had within its county lines, three Congressional districts which could be used as boundaries for multi-member legislative districts. The limitation was never offered as a "state policy," and there is no indication that the court in *Kilgarlin* was "assured" that the limitation would be continued in future apportionment plans.

The trial court in *Kilgarlin,*[31] in its discussion of the different treatment of Harris County, stated at 252 F.Supp. at 444:

> "The Legislature apportioned Harris County in this manner pursuant to the policy of H.B. 195 which limits the size of any multi-member district to fifteen Representatives.

[31] In *Kilgarlin,* the attack in this regard was by Harris County voters, claiming discrimination in that their districts were not as large as the district in Dallas.

"One very practical purpose of this latter limitation is to avoid overtaxing the capacity of the voting machines by limiting the size of a multi-member district to a reasonable population. The presence of more than fifteen names on a ballot would require the use of two machines to accommodate all of the candidates, and this result would increase enormously the expense of a general election in Texas. The policy will apply equally to all counties which attain a population of 1,000,000 or more, so this system is not an arbitrary discrimination toward Harris County. This is not an irrational state policy by any standard; and in the absence of substantial population disparity between these districts, the system is within the protective language of *Reynolds*, 377 U.S. at 579, 84 S.Ct. at 1391.

"For all of the reasons previously mentioned which justify the use of multi-member districts, plus the additional practical reason of limiting the load on the voting machines, this Court holds that House Bill 195 does not deny equal protection of the laws to these intervenors from Harris County."

Although the court termed the limitation a "policy," it was not presented as such. Apparently, the trial court relied upon Defendants' Trial Brief in this regard.[33] The Brief sets forth at page 26:

"Although Section 26 does not *require* that multiple representatives allotted to a single county be elected at large, formation of the county into a multi-member district has been the consistent pattern of apportionment throughout the history of the State. The first and only deviation from that pattern occurred in H.B. 195, when Harris County was divided into three representative districts coextensive with the three congressional districts. This also conformed to a pattern, and

[33] Defendants' Trial Brief, *William W. Kilgarlin* v. *Crawford Martin, et al*, Civil Action No. 63-H-390, In the United States District Court for the Southern District of Texas, Houston Division.

was based on reasonable, practical grounds as explained in the statement by Representative Mutscher which is Plaintiffs' Exhibit 1 attached to his deposition."

Digressing further to the origin of this "state policy," the reference in the Brief as to an exhibit reproducing an entry in the House Journal,[33] entitled "Remarks By The Honorable G. F. Mutscher Pertaining to House Bill No. 195," which provides in pertinent part:

"The committee decided that the traditional use of multi-member districts should be continued in the metropolitan areas. Your committee members reached this decision only after we tried to draw reasonable single-member districts in the metropolitan areas. Our attempts convinced us that the task, besides being quite complicated, was relatively useless. The only available population figures were from the 1960 census, which we found very inaccurate for the fast-growing areas of the cities. In addition, only rarely did the census tracts following a natural boundary or a well known boundary which could be easily identified by the people, and many of the 1960 census boundaries are no longer in existence because of the rapid road-building program under way in the large metropolitan areas. Furthermore, the house members from these districts could not agree on a plan for dividing the areas because most of these members felt that the fragmentation of the districts would decrease their strength in the legislature. All of these considerations led to committee to conclude that drawing single-member districts of approximately 64,000 people even in the large metropolitan areas would be hopeless and futile task.

"However, the committee did feel that too many places in a multi-member district could become as confusing to the voter as the single member districts. In order to avoid having an exceptionally long ballot or overtaxing the capacity of the voting machines, the com-

[33] Journal, Texas House of Representatives 3502-03 (May 31, 1965).

> mittee decided that it would be well advised to limit the number of places in each district to no more than 15. In this manner we hoped to avoid drawing a number of small, difficult to identify, meaningless areas and at the same time prevent a situation where there were so many candidates the voter could not make a rational choice.
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> • • •
>
> Thus the large metropolitan counties were given representatives in proportion to their population by using the multi-member district system."

That the fifteen-member limitation was set forth in *Kilgarlin* as an explanation for the subdistricting of the Harris County multi-member district is apparent, but there is no indication from the three-judge trial court in *Kilgarlin* or from this Court that that particular part of the plan was left undisturbed in "reliance" upon this "compelling state interest." Indeed, the clear import of the quoted language is that the limitation was the result of "the feeling" of the House Committee on Congressional and Legislative Districts, a limitation that the Committee felt "well advised" to accept. The limitation as such was not enacted into law,[34] and surely the "feelings" of a Committee in one legislature is not a "policy" binding on subsequent legislatures. Since the limitation was never a "state policy," the "abandonment"[35] required no justification.

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[34] The plan under consideration in *Kilgarlin* was enacted into law, but it contains no reference to the limitation of multi-member districts to fifteen members. Tex.Rev.Civ.Stat.Ann. art. 195a.

[35] The court below further found that "Dallas County in 1971 fits all the elements of the *Kilgarlin* rationale for single-member districting, and yet Dallas remains a multi-member district. . . ." (A. Jur. § 34A). In fact, the *Kilgarlin* "rationale" did not even involve single-member districts, and if carried forward, would not have required single-member districting in Dallas County, but would have subdivided Dallas into multi-member districts of less than fifteen members.

Another "state policy" which the court below unnecessarily rejected was popular sentiment. Some of the members of the Board testified that the reason for single-member districts in Harris and multi-member districts in Dallas County was popular sentiment.[36] The court below found this reason to be "simply contradicted by the record" and even if true, an invalid reason based upon *Lucas* v. *Colorado General Assembly*, 377 U.S. 713 (1964). Of course, for the rationale of *Lucas* to be applicable, the scheme itself must first be constitutionally infirm, and given this infirmity, the fact that the scheme comports with majority preference is not sufficient to cure the infirmity. But here, the scheme itself is not unconstitutional, and thus *Lucas* is inapplicable. Even if this reasoning of some members of the Board is "contradicted by the record," the fact remains that, rightly or wrongly, the members acted, at least in part, on the basis of what they believed to be popular sentiment, and thus their action was rational, or at least not "completely irrational."

2. *The Differing Treatment of Harris County and the Other Metropolitan Areas Can Be Justified.*

Although the differing treatment does not require explanation, an explanation was offered by then Attorney General Crawford Martin, but principally ignored by the court below. Attorney General Martin testified that in the prior apportionment plan, Harris County had been treated differently from other metropolitan areas in that it was subdivided into three multi-member distrimts along the lines of its three Congressional districts. In 1971, however, the Congressional district lines no longer fell entirely within the county, and therefore to follow these Congressional

[36] Calvert Disposition, p. 13 (7 App. 1966); Martin Deposition, p. 31 (6 App. 1592).

lines again would have necessiated crossing county lines, in violation of the Texas Constitution. Thus, a change in the Harris County districting was necessary, and, with a history of having been subdivided, it was more rational to subdivide Harris County further into single-member districts than to return it to one county-wide multi-member district. (6 App. 1585-86)

The court below did not discuss this explanation directly but circumvented it by pointing out that Texas could not justify its multi-member districts on the basis of history. The court pointed out that, except for the 1965 plan (the *Kilgarlin* plan), *all* Texas metropolitan areas had historically been multi-member districts. Since Texas had redistricted Harris County into single-member districts, the court reasoned, it could no longer justify on a historical basis multi-member districts. The court overlooks the fact that the *Kilgarlin* plan was a part of Texas history. Harris County in 1971 had a history of different treatment, approved by this court. Harris County simply did not fall "within the same historical context as any other city" as the court stated it did.[37] As explained above, for prac-

[37] A.Jur.S. 35A. In addition, the court concluded that Texas could not justify its plan on a historical basis because "history is a questionable justification for unequal treatment in a state with a history of rather active segregation and a state which has always been a 'one-party' state." A.Jur.S. 34A. *See* Brief for Appellant at 29 n.20. Appellees, in connection with the racial history of Texas, cite *Taylor* v. *McKeithen*, ... U.S. ....., 32 L.Ed.2d 648 (1972), for the proposition that racial history would preclude justifying multi-member districts on a historical basis, and also as a distinction between this case and *Whitcomb*. In *Taylor*, however, the particular practice under attack (the drawing of district lines), itself had a long history of bias and franchise dilution. 32 L.Ed.2d at 650 n.3. In Texas, the particular practice under attack (the use of multi-member districts) does not itself have a history of bias. *Taylor* does not substantiate that the validity of multi-member districts is examined upon a basis other than the *Whitcomb* basis solely because a state has a "rather colorful history of racial segregation."

tical reasons Harris County could not be subdivided as it had been in 1965 and thus, since a change was necessary, it was more reasonable to subdivide it into single-member districts than to redistrict it into a county-wide multi-member district.[38]

V.

THE RECORD DOES NOT SUPPORT THE FINDINGS OF THE COURT BELOW AND THE ASSERTIONS OF APPELLEES HERE THAT NEGROES AND MEXICAN-AMERICANS ARE EFFECTIVELY EXCLUDED FROM THE POLITICAL PROCESS DUE TO THE USE OF MULTI-MEMBER DISTRICTS IN DALLAS AND BEXAR COUNTIES.

A. Dallas County.

Rather than responding in a meaningful way to the arguments and analysis of Appellants, both the Appellees and the Amicus have paraphrased or quoted extensively from the "findings" of the court below, merely regurgitating the language of that court's opinion. Some of the Appellees attempt to support the trial court's "findings" by quoting selected words and phrases from the depositions and trial transcript. While their briefs are entertaining, if not to say sensational, they collectively fail to come to grips with Appellants' argument: (1) that the findings of the trial court lack relevance under *Whitcomb;* (2) that the trial court erroneously misplaced the burden of proof by requiring the State to prove effective participation by minority groups; and (3) that by equating effective participation with participation as "a matter of right," the trial court effectively held multi-member districts *per se* invalid. If it stands for nothing else, *Whitcomb* v. *Chavis* clearly places the burden of proof on the challenger of the multi-member district, *not* on the State to meticulously

[38] See Crawford Martin Deposition, pp. 24-26, 6 App. 1585-87.

prove access as "a matter of right" of every conceivable minority group, from Negroes to Republicans, to the political process.

Central to the ruling of the court below that the use of a multi-member legislative district in Dallas County violated standards of equal protection was the finding that selection of Black candidates by the slate-making D.C.R.G. (Democratic Committee for Responsible Government, erroneously referred to by the court below and by the Appellees here as the "Dallas Committee for Responsible Government") did not respect the wishes of the Black community. The inference is that the D.C.R.G. selected token[39] "Toms" as Black candidates. In fact, one of the plaintiffs' own witnesses, Dan Weiser, admitted that Zan Holmes, a Black legislator from Dallas, was endorsed by a meeting of Black leaders *prior* to his endorsement by the D.C.R.G. (2 App. 453).

Moreover, it appears that the D.C.R.G., rather than being a group of downtown businessmen, representing the "establishment," was in fact, according to State Senator Oscar Mauzy, another of the plaintiffs' witnesses, an organization formed by *precinct chairmen* of the Democratic Party in Dallas County. See testimony quoted in Brief for Appellants p. 32 n. 27. Precinct chairmen are, of course, all elected from "single-member districts" and are the elected politicians closest to the people. The D.C.R.G. is therefore a grass roots political organization.

As far as the *power* of the D.C.R.G. is concerned, the record clearly reflects that the D.C.R.G. wields *political*

[39] The testimony of William B. Clark III, one of the directors of the D.C.R.G., is illustrative of the fallacy of the assertion of the court below that the D.C.R.G. is a racist organization that seeks to under-represent Blacks. Clark testified that the D.C.R.G. planned to support three Blacks and one Mexican-American as candidates for the legislature in the 1972 race. (4 App. 943)

power, not *racial* power. Another of the plaintiffs' witnesses, Dr. Conrad, stated that he doubted that a *white* could be elected without the endorsement of the D.C.R.G. (3 App. 582).

The court below also found that Black citizens of Dallas County were denied effective representation by the State Representatives elected from Dallas County. (A.Jur.S. 40A-41A). In fact, the record reflects a remarkable degree of interest by Dallas County legislators in Black community problems. One such problem of the Black community involved a proposal to construct an elevated highway in the Spence community of South Dallas. The proposed highway project was modified from an elevated highway to a ground level highway. Dr. Conrad testified concerning the role of the Dallas County legislators:

> "Q. Now, Dr. Conrad, the State Highway Department had proposed to build an elevated highway through the Spence community in South Dallas County, had it not?
>
> A. Yes.
>
> Q. And that was through a predominantly black area?
>
> A. That's correct.
>
> Q. And many of our black citizens in that area objected to the building of that elevated highway, because they felt there would be rapes, murders and other crimes committed under it. Is that true?
>
> A. More than just that.
>
> Q. And unsightly?
>
> A. Unsightly. The community felt as though they had not been consulted adequately. The [sic] felt as though there had not been adequate representation in their behalf at Austin, since there were no blacks sitting on the Commission that designed the highway.
>
> Q. Now, isn't it true that all 15 members of the

Legislative Delegation from Dallas County who were elected at large went to the Highway Department for the black community and assisted in getting that highway lowered to ground level the way the black community wanted it?

A. I don't know whether all 15. I do know that after a mass meeting that was chaired by the three black elective officials in Dallas that we got massive support from all over, and I would rather suspect that we did have all 15 of the legislators." (3 Ap. 590-91).

Dr. Conrad further testified that he believed that the Dallas County legislators were influenced by Black voting power:

"Q. Now, don't you feel that one of the main reasons that those 15 members from Dallas County helped get that highway lowered through the Spence community was because the black community was a principal motivating factor in getting them elected in the November primary (sic)?

A. Why, certainly." (3 App. 592-93).[40]

The court below employed a litmus paper test concerning the effectiveness of the D.C.R.G., saying:

"Since the Reconstruction Era, there have been only two blacks from the Dallas County delegation to the Texas House of Representatives. In addition, these have been the only two blacks ever slated by the DCRG, and the first was not until 1966." [A.Jur.S. 40A, n. 17].

Politics, however, is rarely so simple a matter as the court below seems to believe. For example, Rev. Zan Holmes, a Black Dallas County legislator (and one of the plaintiffs' witnesses) testified that Berlaind Bashear, one of the un-

[40] It gives without saying that the impact of fifteen legislators upon a State commission is greater than the impact of the two or three whose single-member districts would be affected.

successful Black candidates referred to by the court below, had only lived in Dallas for three or four years at the time of his unsuccessful race in 1970, and was relatively unknown. (3 App. 629).

Finally, the court below, apparently sensing that the record before it would not justify findings of what this Court found missing in *Whitcomb* v. *Chavis*, attempted to distinguish that case on the grounds that (1) the political and racial conditions currently prevailing in Dallas County differed from those prevailing in Marion County and (2) Texas' history of race relations differed from Indiana's.

To the extent that the court, in drawing its distinction, relied on evidence rather than "judicial notice," the only significant testimony on this point was that of the plaintiffs' "expert" witness, Dr. Clifton McClesky, who testified that, at the request of the plaintiffs, he made a comparative study with respect to minority group access to the political process in Indiana, as compared with Texas. (2 App. 464-80). Under cross-examination, however, Dr. McClesky admitted that his knowledge of Marion County, Indiana, was sketchy and secondhand at best and demonstrated this by his ignorance of the fact that Indianapolis is in Marion County:

"Q. Have you ever visited Marion County in Indiana?
A. No.

Q. Have you ever made a study of Marion County, Indiana?
A. No. I am not concentrated on Marion County. I have read some articles on Indiana politics, generally.

Q. Have you ever visited Indianapolis?
A. Yes. I have been in Indianapolis.

Q. Have you ever made a study of conditions in Indianapolis?
A. No, I have not.

• • •

"Q. You have undertaken to give testimony about conditions that exist in the Indiana as compared with the conditions that exist in Texas, have you not?

A. Yes.

Q. But you are not prepared to tell this Court about the conditions that exist in Marion County?

A. No, I am not." (2 App. 486, 488).

In addition to this testimony, the court below took judicial notice of the racial history of Texas in general and of Dallas County in particular. (A.Jur.S. 41A-42A). Initially, it should be noted that it has been some time since racial segregation was the law in Texas. The most recent instance of interference in attempts by Negroes to vote in Dallas County was in 1956. (3 App. 523). And, in the words of Judge Goldberg:

"JUDGE GOLDBERG: Clearly, it is not overly relevant to the ultimate issues in this case. '56 has been a long, long time ago." (3 App. 525).

Yet, when the court wrote its opinion it premised its finding of "a recurring poor performance on the part of the Dallas County delegation concerning the representation of black interests in the Texas House of Representatives" on the mere fact that "State legislators from Dallas County, elected countywide, led the fight for segregation legislation during the decade of the 1950's." (A.Jur.S. 41A).

B. Bexar County.

With regard to Bexar County, Appellees have made no attempt to conform the lower court's opinion to the guidelines set forth in *Whitcomb*. No argument is made that the multi-member district in Bexar County in any way operates to cancel or dilute the voting strength of Mexican-Ameri-

cans. Instead, Appellees, as did the court below, chronicle the economic and cultural deprivation suffered historically by Mexican-Americans, argue that Mexican-Americans constitute an identifiable ethnic minority, point out repeatedly the adverse effect on Mexican-American political participation of the poll tax, execessive filing fees, annual voter registration requirements, and the voter residency requirements, and conclude, therefore, that Bexar County should have single-member districts. This history need not be controverted since it in no way meets the requirements set forth in *Whitcomb*.

Appellees attempt to distinguish *Whitcomb* on the basis that Indiana has a viable two-party system where "well disciplined minorities" and interest groups can form coalitions and influence elections. They contrast this to the one-party situation in Bexar County, and argue that in Texas, the party does not control the nomination process or formulate a "slate", thus several candidates usually offer themselves for each place. As a result, there is generally a "runoff", and "when a candidate favored by a minority enters a primary election and wins the first round, he is almost invariably forced into a runoff and defeated when all opposing forces combine and join against him." Appellees draw no conclusions from these distinctions, other than that they are distinctions. Some conclusions, however, are apparent. The court in *Whitcomb* considered the importance of party control and formulation of the "slate" in the context of whether minorities were able to participate in the formulation of the slate. Thus, the facts that in Bexar County there is no slate, that anyone who so desires may offer himself as a candidate, and that "several candidates usually offer themselves for each place" leads to the conclusion that there is no denial whatsoever of the right to participate in the political process, and indeed shows active participation.

Appellees' argument with regard to Bexar County is set forth in summary at page 50-51 of the Bernal Brief:

> ". . . It is the opportunity to participate that is important; the opportunity to elect a legislator of one's choice or, once elected, to remove him at the next election if his constituency is so disposed. It is this lack of opportunity to participate that this case is about."

Appellees equate the electing of a legislator with voting for a legislator of one's choice. They equate participation in politics with winning in politics. This court in *Whitcomb* expressly held this *not* to be the correct standard. Appellees do not argue that Mexican-Americans are denied access to the political system, that they are denied the right to participate fully in the political system, or that the multi-member district operates to cancel or dilute their votes. Instead, they argue that they lose elections, and given single-member districts, they could win.

CONCLUSION

For the foregoing reasons, Appellants respectfully pray that the judgment of the court below be, in all things, reversed, and the redistricting plan enacted by the Legislative Redistricting Board be declared to satisfy the requirements of the Fourteenth Amendment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that three copies of the foregoing Reply Brief For Appellants have this the .... day of February, 1973, been served upon each counsel of record for Appellees in accordance with Rule 33 of this Court, by depositing the same in a United States Mailbox, with airmail postage prepaid, addressed to said counsel at their post office addresses.

.....
Leon Jaworski

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WHITE, SECRETARY OF STATE OF TEXAS, ET AL. *v.* REGESTER ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. 72-147. Argued February 26, 1973—Decided June 18, 1973

In this litigation challenging the Texas 1970 legislative reapportionment scheme, a three-judge District Court held that the House plan, statewide, contained constitutionally impermissible deviations from population equality, and that the multimember districts provided for Bexar and Dallas Counties invidiously discriminated against cognizable racial or ethnic groups. Though the entire plan was declared invalid, the court permitted its use for the 1972 election except for its injunction order requiring those two county multimember districts to be reconstituted into single-member districts. *Held:*

1. This Court has jurisdiction under 28 U. S. C. § 1253 to consider the appeal from the injunction order applicable to the Bexar County and Dallas County districting, since the three-judge court had been properly convened, and this Court can review the declaratory part of the judgment below. *Roe* v. *Wade*, 410 U. S. 113. Pp. 4–6.

2. State reapportionment statutes are not subject to the stricter standards applicable to congressional reapportionment under Art. I, § 2, and the District Court erred in concluding that this case, where the total maximum variation between House districts was 9.9%, but the average deviation from the ideal was 1.82%, involved invidious discrimination in violation of the Equal Protection Clause. Cf. *Gaffney* v. *Cummings*, *ante*, p. —. Pp. 6–9.

3. The District Court's order requiring disestablishment of the multimember districts in Dallas and Bexar Counties was warranted in the light of the history of political discrimination against Negroes and Mexican-Americans residing, respectively, in those counties

Syllabus

and the residual effects of such discrimination upon those groups. Pp. 9–14.

343 F. Supp. 704, affirmed in part and reversed in part.

WHITE, J., delivered the opinion of the Court, in Parts I, III, and IV of which all Members joined, and in Part II of which BURGER, C. J., and STEWART, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. BRENNAN, J., filed an opinion concurring in part and dissenting in part, in which DOUGLAS and MARSHALL, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 72-147

Mark White, Jr., et al., Appellants, v. Diana Regester et al.	On Appeal from the United States District Court for the Western District of Texas.

[June 18, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case raises two questions concerning the validity of the reapportionment plan for the Texas House of Representatives adopted in 1970 by the State Legislative Redistricting Board: First, whether there were unconstitutionally large variations in population among the districts defined by the plan; second, whether the multimember districts provided for Bexar and Dallas Counties were properly found to have been invidiously discriminatory against cognizable racial or ethnic groups in those counties.

The Texas Constitution requires the state legislature to reapportion the House and Senate at its first regular session following the decennial census. Tex. Const., Art. III, § 28.[1] In 1970, the legislature proceeded to

[1] Article III, § 28, of the Texas Constitution provides:

"The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion to the state into senatorial and representative districts, agreeable to the provisions of Sections 25, 26, and 26-a of this Article. In the event the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislature Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members,

reapportion the House of Representatives but failed to agree on a redistricting plan for the Senate. Litigation was immediately commenced in state court challenging the constitutionality of the House reapportionment. The Texas Supreme Court held that the legislature's plan for the House violated the Texas Constitution.[2]

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as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said Board shall assemble in the City of Austin within ninety (90) days after the final adjournment of such regular session. The Board shall, within sixty (60) days after assembling, apportion the state into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary. Such apportionment shall be in writing and signed by three (3) or more of the members of the Board duly acknowledged as the act and deed of such Board, and, when so executed and filed with the Secretary of State, shall have force and effect of law. Such apportionment shall become effective at the next succeeding statewide general election. The Supreme Court of Texas shall have jurisdiction to compel such Commission ot perform its duties in accordance with the provisions of this section by writ of mandamus or other extraordinary writs conformable to the usages of law. The Legislature shall provide necessary funds for clerical and technical aid and for other expenses incidental to the work of the Board, and the Lieutenant Governor and the Speaker of the House of Representatives shall be entitled to receive per diem and travel expense during the Board's session in the same manner and amount as they would receive while attending a special session of the Legislature. This amendment shall become effective January 1, 1951. As amended Nov. 2, 1948."

[2] The Court held that the plan violated Art. III, § 26, of the Texas Constitution, which provides:

"The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be

Smith v. *Craddick*, 471 S. W. 2d 375 (Tex. 1971). Meanwhile, pursuant to the requirements of the Texas Constitution, a Legislative Redistricting Board had been formed to begin the task of redistricting the Texas Senate. Although the Board initially confined its work to the reapportionment of the Senate, it was eventually ordered, in light of the judicial invalidation of the House plan, to also reapportion the House. *Mauzy* v. *Legislative Redistricting Board*, 471 S. W. 2d 570 (Tex. 1971).

On October 15, 1971, the Redistricting Board's plan for the reapportionment of the Senate was released, and, on October 22, 1971, the House plan was promulgated. Only the House plan remains at issue in this case. That plan divided the 150-member body among 79 single-member and 11 multimember districts. Four lawsuits, eventually consolidated, were filed challenging the Board's Senate and House plans and asserting with respect to the House plan that it contained impermissible deviations from population equality and that its multimember districts for Bexar County and Dallas County operated to dilute the voting strength of racial and ethnic minorities.

A three-judge District Court sustained the Senate plan, but found the House plan unconstitutional. *Graves* v. *Barnes*, 343 F. Supp. 704 (WD Tex. 1972). The House plan was held to contain constitutionally impermissible deviations from population equality, and the multimember districts in Bexar and Dallas Counties

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formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties."

were deemed constitutionally invalid. The District Court gave the Texas Legislature until July 1, 1973, to reapportion the House, but the District Court permitted the Board's plan to be used for purposes of the 1972 election, except for requiring that the Dallas County and Bexar County multimember districts be reconstituted into single-member districts for the 1972 election.

The State appealed the statewide invalidation of the House plan and the substitution of single-member for multimember districts in Dallas County and Bexar County.[3] MR. JUSTICE POWELL denied a stay of the judgment of the District Court, 405 U. S. 1201, and we noted probable jurisdiction. 409 U. S. 840.

I

We deal at the outset with the challenge to our jurisdiction over this appeal under 28 U. S. C. § 1253, which permits injunctions in suits required to be heard and determined by a three-judge district court to be appealed directly to this Court.[4] It is first suggested that the case was not one required to be heard by a three-judge court. The contention is frivolous. A statewide reapportionment statute was challenged and injunctions were asked against its enforcement. The constitutional questions raised were not insubstantial on their face, and the complaint clearly called for the convening of a three-judge court. That the court declared the entire appor-

[3] In a separate appeal, we summarily affirmed that portion of the judgment of the District Court upholding the Senate plan. *Archer v. Smith*, 409 U. S. 808 (1972).

[4] 28 U. S. C. § 1253 provides:

"Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

tionment plan invalid, but entered an injunction only with respect to its implementation for the 1972 elections in Dallas and Bexar Counties, in no way indicates that the case required only a single judge. The State is therefore properly here on direct appeal with respect to the injunction dealing with Bexar and Dallas Counties, for the order of the court directed at those counties was literally an order "granting . . . an . . . injunction in any civil action . . . required . . . to be heard and determined by a district court of three judges" within the meaning of § 1253.

We also hold that the State, because it appealed from the entry of an injunction, is entitled to review of the District Court's accompanying declaration that the proposed plan for the Texas House of Representatives, including those portions providing for multimember districts in Dallas and Bexar Counties, was invalid statewide. This declaration was the predicate for the court's order requiring Dallas and Bexar to be reapportioned into single districts, for its order that "unless the Legislature of the State of Texas on or before July 1, 1973, has adopted a plan to reapportion the legislative districts within the State in accordance with the constitutional guidelines set out in this opinion this court will so apportion the State of Texas"; and for ordering the Secretary of State to "adopt and implement any and all procedures necessary to properly effectuate the orders of this Court in conformance with this Opinion. . . ." In these circumstances, although the State could not have directly appealed to this Court the entry of a declaratory judgment unaccompanied by any injunctive relief, *Gunn* v. *University Committee*, 399 U. S. 383 (1970); *Mitchell* v. *Donovan*, 398 U. S. 427 (1970), we conclude that we have jurisdiction of the State's entire appeal. *Roe* v. *Wade*, 410 U. S. 113 (1973); *Florida Lime & Avocado Growers* v. *Jacobson*, 362 U. S. 73 (1960). With the

Texas reapportionment plan before it, it was in the interest of judicial economy and the avoidance of piecemeal litigation that the three-judge District Court have jurisdiction over all claims raised against the statute when a substantial constitutional claim was alleged, and an appeal to us, once properly here, has the same reach. *Roe* v. *Wade*, *supra*, at 123; *Carter* v. *Jury Comm'n*, 396 U. S. 320 (1970); *Florida Lime & Avocado Growers* v. *Jacobson*, *supra*, at 80.

II

The reapportionment plan for the Texas House of Representatives provides for 150 representatives to be selected from 79 single-member and 11 multimember districts. The ideal district is 74,645 persons. The districts range from 71,597 to 78,943 in population per representative, or from 5.8% overrepresentation to 4.1% underrepresentation. The total variation between largest and smallest district is thus 9.9%.[1]

The District Court read our prior cases to require any deviations from equal population among districts to be justified by "acceptable reasons" grounded in state policy; relied on *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969), to conclude that the permissible tolerances suggested by *Reynolds* v. *Sims*, 377 U. S. 533 (1964), had been substantially eroded; suggested that *Abate* v. *Mundt*, 403 U. S. 182 (1971), in accepting total deviations of 11.9% in a county reapportionment was *sui generis*; and considered the "critical issue" before it to be whether "the State [has] justified any and all variances, however small, on a basis of a consistent, rational State policy." 343 F. Supp., at 713. Noting the single fact that the total deviation from the ideal between District 3 and District 85 was 9.9%, the District Court

[1] See Appendix to opinion of the Court.

concluded that justification by the State was called for and could discover no acceptable state policy to support the deviations. The District Court was also critical of the actions and procedures of the Legislative Reapportionment Board and doubted "that [the] board did the sort of deliberative job . . . worthy of judicial abstinence." *Id.*, at 717. It also considered the combination of single-member and multimember districts in the House plan "haphazard," particularly in providing single-member districts in Houston and multimember districts in other metropolitan areas, and that this "irrationality, without reasoned justification, may be a separate ground for declaring the entire plan unconstitutional."* Finally, the court specifically invalidated the use of multimember districts in Dallas and Bexar Counties as unconstitutionally discriminatory against a racial or ethnic group.

The District Court's ultimate conclusion was that "the apportionment plan for the State of Texas is unconstitutional as unjustifiably remote from the ideal of 'one man, one vote' and that the multi-member districting schemes for the House of Representatives as they relate specifically

*It may be, although we are not sure, that the District Court would have invalidated the plan statewide because of what it thought was an irrational mixture of multi- and single-member districts. Thus in questioning the use of single-member districts in Houston but multimember districts in all other urban areas, and remarking that the State had provided neither "compelling" nor "rational" explanation for the differing treatment, the District Court merely concluded that this classification "may be" an independent ground for invalidating the plan. But there are not authorities in this Court for the proposition that the mere mixture of multi- and single-member districts in a single plan, even among urban areas, is invidiously discriminatory, and we construe the remarks not as part of the District Court's declaratory judgment invalidating the state plan but as mere advance advice to the Texas Legislature as to what would or would not be acceptable to the District Court.

to Dallas and to Bexar Counties are unconstitutional in that they dilute the votes of racial minorities." *Id.*, at 735.[1]

Insofar as the District Court's judgment rested on the conclusion that the population differential of 9.9% from the ideal district between District 3 and District 85 made out a prima facie equal protection violation under the Fourteenth Amendment, absent special justification, the court was in error. It is plain from *Mahan* v. *Howell*, 410 U. S. 315 (1970), and *Gaffney* v. *Cummings*, *ante*, p. —, that state reapportionment statutes are not subject to the same strict standards applicable to reapportionment of congressional seats. *Kirkpatrick* v. *Preisler* did not dilute the tolerances contemplated by *Reynolds* v. *Sims* with respect to state districting, and we did not hold in *Swann* v. *Adams*, 385 U. S. 440 (1967), or *Kilgarlin* v. *Hill*, 386 U. S. 120 (1967), nor later in *Mahan* v. *Howell*, *supra*, that *any* deviations from absolute equality, however small, must be justified to the satisfaction of the judiciary to avoid invalidation under the Equal Protection Clause. For the reasons set out in *Gaffney* v. *Cummings*, *ante*, p. —, we do not consider relatively minor population deviations among state legislative districts to substantially dilute the weight of individual votes in the larger districts so as to deprive individuals in these districts of fair and effective representation. Those reasons are as applicable to Texas as they are to Connecticut; and we cannot glean an equal protection violation from the single fact that two legislative districts in Texas differ from one another by

[1] The District Court also concluded, contrary to the assertions of certain plaintiffs, that the Senate districting scheme for Bexar County did not "unconstitutionally dilute the votes of any political faction or party." The majority of the District Court also concluded that Senate districting scheme for Harris County did not dilute black votes.

as much as 9.9%, when compared to the ideal district. Very likely, larger differences between districts would not be tolerable without justification "based on legitimate considerations incident to the effectuation of a rational state policy," *Reynolds* v. *Sims*, 377 U. S., at 579; *Mahan* v. *Howell*, *supra*, at —, but here we are confident that appellees failed to carry their burden of proof insofar as they sought to establish a violation of the Equal Protection Clause from population variations alone. The total variation between two districts was 9.9%, but the average deviation of all House districts from the ideal was 1.82%. Only 23 districts, all single-member, were over or underrepresented by more than 3%, and only three of those districts by more than 5%. We are unable to conclude from these deviations alone that appellees satisfied the threshold requirement of proving a prima facie case of invidious discrimination under the Equal Protection Clause. Because the District Court had a contrary view, its judgment must be reversed in this respect.[8]

III

We affirm the District Court's judgment, however, insofar as it invalidated the multimember districts in Dal-

[8] The Court's conclusion that the variations in this case were not justified by a rational state policy would, in any event, require reconsideration and reversal under *Mahan* v. *Howell*, 410 U. S. 315 (1973). The Texas Constitution, Art. III, § 26, expresses the state policy against cutting county lines wherever possible in forming representative districts. The District Court recognized the policy but, without the benefit of *Mahan* v. *Howell*, may have thought the variations too great to be justified by that policy. It perhaps thought also that the policy had not been sufficiently or consistently followed here. But it appears to us that to stay within tolerable population limits it was necessary to cut some county lines and that the State achieved a constitutionally acceptable accommodation between population principles and its policy against cutting county lines in forming representative districts.

las and Bexar Counties and ordered those districts to be redrawn into single-member districts. Plainly, under our cases, multimember districts are not *per se* unconstitutional, nor are they necessarily unconstitutional when used in combination with single-member districts in other parts of the State. *Whitcomb* v. *Chavis*, 403 U. S. 124 (1971); *Mahan* v. *Howell*, 410 U. S. 315 (1973); see *Burns* v. *Richardson*, 384 U. S. 73 (1964); *Fortson* v. *Dorsey*, 379 U. S. 433 (1965); *Lucas* v. *Forty-Fourth General Assembly*, 377 U. S. 713 (1964); *Reynolds* v. *Sims*, 377 U. S. 533 (1964).[9] But we have entertained claims that multimember districts are being used invidiously to cancel out or minimise the voting strength of racial groups. See *Whitcomb* v. *Chavis*, *supra*; *Burns* v. *Richardson*, *supra*; *Fortson* v. *Dorsey*, *supra*. To sustain such claims, it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice. *Whitcomb* v. *Chavis*, *supra*, at 149–150.

With due regard for these standards, the District Court first referred to the history of official racial discrimination in Texas, which at times touched the right of Negroes to register and vote and to participate in the democratic

[9] See *Whitcomb* v. *Chavis*, 403 U. S. 124, 141–148 (1971), and the cases discussed in n. 22 of that opinion, including *Kilgarlin* v. *Hill*, 386 U. S. 120 (1967), where we affirmed the District Court's rejection of petitioners' contention that the combination of single-member, multimember, and floterial districts in a single reapportionment plan was "an unconstitutional 'crazy quilt.'" 386 U. S., at 121.

processes. 343 F. Supp., at 725. It referred also to the Texas rule requiring a majority vote as a prerequisite to nomination in a primary election and to the so-called "place" rule limiting candidacy for legislative office from a multimember district to a specified "place" on the ticket, with the result being the election of representatives from the Dallas multimember district reduced to a head-to-head contest for each position. These characteristics of the Texas electoral system, neither in themselves improper or invidious, enhanced the opportunity for racial discrimination, the District Court thought.[10] More fundamentally, it found that since Reconstruction days, there have been only two Negroes in the Dallas County delegation to the Texas House of Representatives and that these two were the only two Negroes ever slated by the Dallas Committee for Responsible Government (DCRG), a white-dominated organization that is in effective control of Democratic Party candidate-slating in Dallas County.[11] That organization, the District Court found, did not need the support of the Negro community to win elections in the county, and it did not therefore exhibit good-faith concern for the political and other needs and aspirations of the Negro community. The court found that as recently as 1970 the DCRG was relying upon "racial campaign tactics in white precincts to defeat candidates who had the overwhelming support of the black community." *Id.*, at 727. Based on the evidence before it, the District Court concluded that "the black community has been effectively

[10] There is no requirement that candidates reside in subdistricts of the multimember district. Thus, all candidates may be selected from outside the Negro residential area.

[11] The District Court found that "it is extremely difficult to secure either a representative seat in the Dallas County delegation or the Democratic primary nomination without the endorsement of the Dallas Committee for Responsible Government." 343 F. Supp. 726.

excluded from participation in the Democratic primary selection process," *id.*, at 726, and was therefore generally not permitted to enter into the political process in a reliable and meaningful manner. These findings and conclusions are sufficient to sustain the District Court's judgment with respect to the Dallas multimember district and, on this record, we have no reason to disturb them.

IV

The same is true of the order requiring disestablishment of the multimember district in Bexar County. Consistently with *Hernandez* v. *Texas*, 347 U. S. 475 (1954), the District Court considered the Mexican-Americans in Bexar County to be an identifiable class for Fourteenth Amendment purposes and proceeded to inquire whether the impact of the multimember district on this group constituted invidious discrimination. Surveying the historic and present condition of the Bexar County Mexican-American community, which is concentrated for the most part on the west side of the City of San Antonio, the court observed, based upon prior cases and the record before it, that the Bexar community, along with other Mexican-Americans in Texas,[13] had long "suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics, and others." 343 F. Supp., at 728. The bulk of the Mexican-American community in Bexar County occupied the Barrio, an area consisting of about 28 contiguous census tract in the City of San Antonio. Over 78% of Barrio residents were Mexican-Americans, making up 29% of the county's total population. The Barrio is an area of poor housing; its residents have low income

[13] Mexican-Americans constituted approximately 20% of the population of the State of Texas.

and a high rate of unemployment. The typical Mexican-American suffers a cultural and language barrier [13] that makes his participation in community processes extremely difficult, particularly, the court thought, with respect to the political life of Bexar County. "A cultural incompatability . . . conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican-American access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary." 343 F. Supp., at 731. The residual impact of this history reflected itself in the fact that Mexican-American voting registration remained very poor in the county and that, although they now occupy a plurality in Bexar County, only five Mexican-Americans since 1880 have served in the Texas Legislature from that county. Of these, only two were from the Barrio area.[14] The District Court also concluded from the evidence that the Bexar County legislative delegation in the House was insufficiently responsive to Mexican-American interests.

Based on the totality of the circumstances, the District Court evolved its ultimate assessment of the multi-member district, overlaid, as it was, on the cultural and economic realities of the Mexican-American community in Bexar County and its relationship with the rest of the county. Its judgment was that Bexar County Mexican-Americans "are effectively removed from the political processes of Bexar [County] in violation of all of the

[13] The District Court found that "[t]he fact that [Mexican-Americans] are reared in a subculture in which a dialect of Spanish is the primary language provides permanent impediments to their educational and vocational advancement and creates other traumatic problems." 343 F. Supp., at 730.

[14] Two other residents of the Barrio, a Negro and an Anglo-American, have also served in the Texas Legislature.

Whitcomb standards, whatever their absolute numbers may total in that County." *Id.*, at 733. Single-member districts were thought required to remedy "the effects of past and present discriminations against Mexican-Americans," *id.*, and to bring the community into the full stream of political life of the county and State by encouraging their further registration, voting, and other political activities.

The District Court apparently paid due heed to *Whitcomb* v. *Chavis*, *supra*, did not hold that every racial or political group has a constitutional right to be represented in the state legislature, but did, from its own special vantage point, conclude that the multimember district, as designed and operated in Bexar County, invidiously excluded Mexican-Americans from effective participation in political life, specifically in the election of representatives to the Texas House of Representatives. On the record before us, we are not inclined to overturn these findings, representing as they do a blend of history and an intensely local appraisal of the design and impact of the Bexar County multimember district in the light of past and present reality, political and otherwise.

Affirmed in part, reversed in part.

APPENDIX TO OPINION OF WHITE, J.

The Redistricting Board's plan embodied the following districts:

District	Population	Average Multi-Member	(Under) Over	Percent Deviation Over (Under)
1	76,285		1,640	2.2
2	77,102		2,457	3.3
3	78,943		4,298	5.8
4	71,928		(2,717)	(3.6)
5	75,014		369	.5
6	76,051		1,406	1.9
7 (3)	221,314	73,771	(874)	(1.2)
8	74,303		(342)	(.5)
9	76,813		2,168	2.9
10	72,410		(2,235)	(3.0)
11	73,136		(1,509)	(2.0)
12	74,704		59	.1
13	75,929		1,284	1.7
14	76,597		1,952	2.6
15	76,701		2,056	2.8
16	74,218		(427)	(.6)
17	72,941		(1,704)	(2.3)
18	77,159		2,514	3.4
19 (2)	150,209	75,104	459	.6
20	75,592		947	1.3
21	74,651		6	.0
22	73,311		(1,334)	(1.8)
23	75,777		1,132	1.5
24	73,966		(679)	(.9)
25	75,633		988	1.3
26 (18)	1,327,321	73,740	(905)	(1.2)
27	77,788		3,143	4.2
28	72,367		(2,278)	(3.1)
29	76,505		1,860	2.5
30	77,008		2,363	3.2
31	75,025		380	.5
32 (9)	675,499	75,055	410	.5
33	73,071		(1,574)	(2.1)
34	76,071		1,426	1.9
35 (2)	147,553	73,777	(868)	(1.2)
36	74,633		(12)	(.0)
37 (4)	295,516	73,879	(766)	(1.0)
38	78,897		4,252	5.7
39	77,363		2,718	3.6
40	71,597		(3,048)	(4.1)
41	73,678		(967)	(1.3)

Continued

APPENDIX—*Continued*

District	Population	Average Multi-Member	(Under) Over	Percent Deviation Over (Under)
42	74,706		61	.1
43	74,160		(485)	(.6)
44	75,278		633	.8
45	78,090		3,445	4.6
46 (11)	826,698	75,154	509	.7
47	76,819		1,674	2.2
48 (3)	220,056	73,352	(1,293)	(1.7)
49	76,254		1,609	2.2
50	74,268		(377)	(.5)
51	75,800		1,155	1.5
52	76,601		1,956	2.6
53	74,499		(146)	(.2)
54	77,505		2,860	3.8
55	76,947		2,302	3.1
56	74,070		(575)	(.8)
57	77,211		2,566	3.4
58	75,120		475	.6
59 (2)	144,995	72,497	(2,148)	(2.9)
60	75,054		409	.5
61	73,356		(1,289)	(1.7)
62	72,240		(2,405)	(3.2)
63	75,191		546	.7
64	74,546		(99)	(.1)
65	75,720		1,075	1.4
66	72,310		(2,335)	(3.1)
67	75,034		389	.5
68	74,524		(121)	(.2)
69	74,765		120	.2
70	77,827		3,182	4.3
71	73,711		(934)	(1.3)
72 (4)	297,770	74,442	(203)	(.3)
73	74,309		(336)	(.5)
74	73,743		(902)	(1.2)
75 (2)	147,722	73,861	(784)	(1.1)
76	76,083		1,438	1.9
77	77,704		3,059	4.1
78	71,900		(2,745)	(3.7)
79	75,164		519	.7
80	75,111		466	.6
81	75,674		1,029	1.4
82	76,006		1,361	1.8
83	75,752		1,107	1.5
84	75,634		989	1.3
85	71,564		(3,081)	(4.1)

Continued

APPENDIX—*Continued*

District	Population	Average Multi-Member	(Under) Over	Percent Deviation Over (Under)
86	73,157		(1,488)	(2.0)
87	73,045		(1,600)	(2.1)
88	75,076		431	.6
89	74,206		(439)	(.6)
90	74,377		(268)	(.4)
91	73,381		(1,264)	(1.7)
92	71,908		(2,737)	(3.7)
93	72,761		(1,884)	(2.5)
94	73,328		(1,317)	(1.8)
95	73,825		(820)	(1.1)
96	72,505		(2,140)	(2.9)
97	74,202		(443)	(.6)
98	72,380		(2,265)	(3.0)
99	74,123		(522)	(.7)
100	75,682		1,037	1.4
101	75,204		559	.7

SUPREME COURT OF THE UNITED STATES

Nos. 72–147 AND 71–1476

Mark White, Jr., et al., Appellants, 72–147 v. Diana Regester et al. } On Appeal from the United States District Court for the Western District of Texas.

J. Brian Gaffney, Appellant, 71–1476 v. Theodore R. Cummings et al. } On Appeal from the United States District Court for the District of Connecticut.

[June 18, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, concurring in part and dissenting in part in No. 72–147, and dissenting in No. 71–1476.

The Court today upholds statewide legislative apportionment plans for Connecticut and Texas, even though these plans admittedly entail substantial inequalities in the population of the representative districts, and even though the States have made virtually no attempt to justify their failure "to construct districts . . . as nearly of equal population as is practicable." *Reynolds* v. *Sims*, 377 U. S. 533, 577 (1964). In reaching this conclusion, the Court sets aside the judgment of the United States District Court for the District of Connecticut holding the Connecticut plan invalid, and the judgment of the United States District Court for the Western District of Texas reaching a similar result as to the Texas plan. In the Texas case, the Court does affirm, however, the District Court's determination that the use of multimember districts in Dallas and Bexar Counties had the unconstitutional effect of minimizing the voting strength

of racial groups.[1] See *Whitcomb* v. *Chavis*, 403 U. S. 124, 142–144 (1971); *Burns* v. *Richardson*, 384 U. S. 73, 88 (1966); *Fortson* v. *Dorsey*, 379 U. S. 433, 439 (1965). With that latter conclusion I am in full agreement, as I also agree with and join Part I of the Court's opinion in No. 72–147, *White* v. *Regester*. But the decision to uphold the state apportionment schemes reflects a substantial and very unfortunate retreat from the principles established in our earlier cases, and I therefore must state my dissenting views.

I

At issue in No. 71–1476, *Gaffney* v. *Cummings*, is the 1971 reapportionment plan for election of delegates to the House of Representatives of Connecticut. The plan was premised on a 151-member House, with each delegate elected from a single-member district. Since the population of the State was 3,032,217, according to 1970 census data, the ideal would fix the population of each district at 20,081. In fact, the population of many districts deviated substantially from the ideal, ranging from a district underrepresented by 3.93% to one overrepresented by 3.90%. The total spread of deviation—a figure deemed relevant in each of our earlier decisions—

[1] In *Fortson* v. *Dorsey*, 379 U. S. 433 (1965), we held that a multimember district is not *per se* unconstitutional under the Equal Protection Clause, even though we had previously recognized certain inherently undesirable features of the device. See *Lucas* v. *Colorado General Assembly*, 377 U. S. 713, 731 n. 21 (1964). We have concluded, however, that the use of the device is, in fact, unconstitutional, where it operates to "minimize or cancel out the voting strength of racial or political elements in the voting population." *Burns* v. *Richardson*, 384 U. S. 73, 88 (1966), quoting from *Fortson* v. *Dorsey*, *supra*, at 439. Today's decision is the first in which we have sustained an attack on the use of multimember districts. Cf. *Whitcomb* v. *Chavis*, 403 U. S. 124, 144 (1971).

was 7.83%. The population of 39 assembly districts deviated from the average by more than 3%. Another 34 districts deviated by more than 2%. The average deviation was just under 2%. To demonstrate that the state plan did not achieve the greatest practicable degree of equality in per district population, appellees submitted a number of proposed apportionment plans, including one that would have significantly reduced the extent of inequality. The total range of deviation under appellee's plan would have been 2.61%, as compared to 7.83% under the state plan.

The District Court held the state plan invalid on the grounds that "the deviations from equality of populations of the . . . House districts are not justified by any sufficient state interest." [2] 341 F. Supp. 139, 148 (Conn. 1972). Instead of adopting one of appellees' plans, the Court appointed a Special Master to chart a new plan, and his effort produced a scheme with a total range of deviation of only 1.16%. In overturning the District Court's decision, the Court does not conclude, as it did earlier this Term in *Mahan* v. *Howell*, — U. S. — (1973), that the District Court failed to discern the State's sufficient justification for the deviations. Indeed, in view of the State's halfhearted attempts to justify the deviations at issue here, such a conclusion could hardly be supported. Whereas the Commonwealth of Virginia made a substantial effort to draw district lines in conformity with the boundaries of political subdivi-

[2] With regard to the senatorial districts, the 1971 plan produced a total variance of 1.81%. Although appellees did not specifically challenge the apportionment of senatorial districts, the District Court properly concluded that its finding of unconstitutional deviation in one house required invalidation of the entire apportionment plan. *Maryland Comm'n for Fair Representation* v. *Tawes*, 377 U. S. 656, 673 (1964); *Lucas* v. *Colorado General Assembly*, *supra*, at 735. *Burns* v. *Richardson*, *supra*, at 83.

sions—an effort that was found sufficient in *Mahan* v. *Howell* to validate a plan with total deviation of 16.4%—the evidence in the case before us requires the conclusion that Connecticut's apportionment plan was drawn in complete disregard of political subdivision lines. The District Court pointed out that "[t]he boundary lines of 47 towns are cut under the Plan so that one or more portions of each of these 47 towns are added to another town or a portion of another town to form an assembly district." 341 F. Supp., at 142. Moreover, the boundary lines of 29 of these 47 towns were cut more than once, and the Plan created "78 segments of towns in the formation of 151 assembly districts." *Ibid.*

Although appellant failed to offer cogent reasons in explanation of the substantial variations in district population, the Court nevertheless upholds the state plan. The Court reasons that even in the absence of any explanation for the failure to achieve equality, the showing of a total deviation of almost 8% does not make out a prima facie case of invidious discrimination under the Fourteenth Amendment. Deviations no greater than 8% are, in other words, to be deemed *de minimis*, and the State need not offer any justification at all for the failure to approxmiate more closely the ideal of *Reynolds* v. *Sims*, *supra*.

The Texas reapportionment case, No. 72–147, *Bullock* v. *Regester*, presents a similar situation, except that the range of deviation in district population is greater and the State's justifications are, if anything, more meagre. An ideal district in Texas, which chooses the 150 members of the State House of Representatives from 79 single-member and 11 multimember districts, is 74,645. As defined in the State's 1970 plan, a substantial number of districts departed significantly from the ideal. The total range of deviation was at least 9.9%, and arguably

almost 30%, depending on the mode of calculation.[3] The District Court pointed out that

> "[i]n all of the evidence presented in this case, the State has not attempted to explain in terms of rational State policy its failure to create districts equal in population as nearly as practicable, nor has the State sought to justify a single deviation from precise mathematical equality. The lengthy depositions of the members of the legislative redistricting board and of the staff members who did the actual drawing of the legislative district lines are devoid of any meaningful indications of the standards used." 343 F. Supp. 704, 714 (WD Tex. 1972).

As the District Court's opinion makes clear, the variations surely cannot be defended as a necessary byproduct of a state effort to avoid fragmentation of political subdivisions. Nevertheless, the Court today sets aside the District's Court decision, reasoning, as in the Connecticut case, that a showing of as much as 9.9% total deviation still does not establish a prima facie case under the Equal Protection Clause of the Fourteenth Amendment. Since the Court expresses no misgivings about our recent decision in *Abate* v. *Mundt*, 403 U. S. 182 (1971), where we held that a total deviation of 11.9% must be justified by the State, one can reasonably surmise that a

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[3] The District Court pointed out that "the State's method of computing deviations in the multi-member districts may distort the actual percentage deviations in those eleven districts. . . . Since we have concluded that the 9.9% total deviation is not the result of a good faith attempt to achieve population equality as nearly as practicable, it is unnecessary for us to resolve this complex computational conflict." 343 F. Supp., at 713 n. 5. A similar conflict existed in *Mahan* v. *Howell*, *supra*, as I pointed out in my dissenting opinion, *id.*, at —, and there too the Court declined to indicate any awareness of the dispute.

line has been drawn at 10%—deviations in excess of that amount are apparently acceptable only on a showing of justification by the State; deviations less than that amount require no justification whatsoever.

II

The proposition that certain deviations from equality of district population are so small as to lack constitutional significance, while repeatedly urged on this Court by States that failed to achieve precise equality, has never before commanded a majority of the Court.[4] Indeed, in *Kirkpatrick* v. *Preisler*, 394 U. S. 526, 530 (1969), we expressly rejected the argument

> "that there is a fixed numerical or percentage population variance small enough to be considered *de minimis* and to satisfy without question the 'as nearly as practicable' standard. The whole thrust of the 'as nearly as practicable' approach is inconsistent with adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case."

The Court reasons, however, that *Kirkpatrick* v. *Preisler*, *supra*, a case that concerned the division of Missouri into

[4] There is a statement, to be sure, in *Swann* v. *Adams*, 385 U. S. 440, 444 (1967), that "[*d*]*e minimis* deviations are unavoidable," but that statement must be viewed in context. By way of clarification, the Court immediately added that "the *Reynolds* opinion limited the allowable deviations to those minor variations which 'are based on legitimate considerations incident to the effectuation of a rational state policy.' 377 U. S. 533, 579." *Ibid.* Similarly, the Court noted, quoting from *Roman* v. *Sincock*, 377 U. S. 695, 710 (1964), that "the Constitution permits 'such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination.'" 385 U. S., at 444. *Swann* v. *Adams* does not, in my view, suggest any support for the proposition that deviations as great as 10% are tolerable even in the absence of any justification or explanation by the State.

congressional districts, has no application to the apportionment of seats in a state legislature. In my dissenting opinion in *Mahan* v. *Howell, supra,* I pointed out that the language, reasoning, and background of the *Kirkpatrick* decision all command the conclusion that our holding there is applicable to state legislative apportionment no less than to congressional districting. In fact, this Court specifically recognized as much in the context of a challenge to an Arizona apportionment scheme in *Ely* v. *Klahr,* 403 U. S. 108 (1971). Describing the opinion of the District Court whose judgment was under review, we noted that the court below had "properly concluded that this plan was invalid under *Kirkpatrick* v. *Preisler,* 394 U. S. 526 (1969), and *Wells* v. *Rockefeller,* 394 U. S. 542 (1969), since the legislature had operated on the notion that a 16% deviation was *de minimis* and consequently made no effort to achieve greater equality." 403 U. S., at 111. Yet it is precisely such a notion that the Court today approves.[5]

Moreover, even if *Kirkpatrick* should be deemed inapplicable to the apportionment of state legislative districts, the reasoning that gave rise to our rejection of a *de minimis* approach is fully applicable to the case be-

[5] By contrast, in *Mahan* v. *Howell, supra,* the Court expressly reaffirmed the holding of *Reynolds* v. *Sims, supra,* that "deviations from the equal-population principle are constitutionally permissible" "[*s*]*o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy.*" 377 U. S., at 579, quoted in *Mahan* v. *Howell,* at — (emphasis added). In my view, the Court incorrectly concluded in *Mahan* v. *Howell* that Virginia had justified the population variations at issue there. Nevertheless, the Court did follow the line of analysis prescribed in our earlier decisions—requiring the State to justify every deviation from precise equality. The approach of *Mahan* is, therefore, directly at odds with the approach adopted today. See also, *e. g., Abate* v. *Mundt,* 403 U. S. 182, 185 (1971); *Kilgarlin* v. *Hill,* 386 U. S. 120, 122 (1967); *Swann* v. *Adams,* 385 U. S. 440, 443–446 (1967).

fore us. We pointed out there that the "as nearly as practicable" standard—the standard that controls legislative apportionment as well as congressional districting, *Reynolds* v. *Sims*, *supra*, at 577—demands that "the State make a good-faith effort to achieve precise mathematical equality. . . . Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes." 394 U. S., at 530–531. *Kirkpatrick* recognized that "to consider a certain range of variances *de minimis* would encourage legislators to strive for that range rather than for equality as nearly as practicable." 394 U. S., at 531.

Although not purporting to quarrel with the principle that precise mathematical equality is the constitutionally mandated goal of reapportionment, the Court today establishes a wide margin of tolerable error, and thereby undermines the effort to effectuate the principle. For it is clear that the state legislatures and the state and federal courts have viewed *Kirkpatrick* as controlling on the issue of legislative apportionment, and the outgrowth of that assumption has been a truly extraordinary record of compliance with the constitutional mandate. Appellees in No. 71–1476 make the point forcefully by comparing the extent of inequality in the population of legislative districts prior to 1969, the year of our decision in *Kirkpatrick*, with the extent of inequality in subsequent years.[6] Prior to 1969, the range of variances in population of state senatorial districts exceeded 15% in 44 of the 50 States. Three States had reduced the total variance to between 10 and 15%; two

[6] Appellees figures are compiled from a table entitled "Apportionment of Legislatures" in 17 Council of State Governments, The Book of the States: 1968–1969, at 66–67 (1968), and from Council of State Governments, Reapportionment in the Seventies (1973).

had cut the variance to between 5 and 10%; only one had reduced the variance below 5%. The record of apportionment of state house districts was even less encouraging. Variances in excess of 15% characterized all but two of the States, and only one of these had brought the total variance under 10%. The improvement in the post-1969 years could not have been more dramatic. The table provided by appellees, set out in full in the margin,[7] reveals that in almost one-half of the States the total variance in population of senatorial districts was within 5% of zero. Of the 45 States as to which information was available, 32 had reduced the total variance below 10% and only eight had failed to bring the total variance below 15%. With regard to house districts the improvement is similar. On the basis of information concerning 42 States, it appears that 20 had achieved a total variance of less than 5%, and only 14 retained districts with a total variance of more than 15% from the constitutional ideal.

To appreciate the significance of this encouraging development, it is important to understand that the demand for precise mathematical equality rests neither on

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[7] Deviations After 1970

Range of Deviations	Number of States	Percentage of States
	Senate:	
Under 1%	3	6.7%
1–5%	21	46.7%
5–10%	8	17.8%
10–15%	5	11.1%
Over 15%	8	17.8%
	House:	
Under 1%	4	9.5%
1–5%	16	38.1%
5–10%	8	19.1%
10–15%	4	9.5%
Over 15%	10	23.8%

a scholastic obsession with abstract numbers nor a rigid insensitivity to the political realities of the reapportionment process. Our paramount concern has remained an individual and personal right—the right to an equal vote. "While the result of a court decision in a state legislative apportionment controversy may be to require the restructing of the geographical distribution of seats in a state legislature, the judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens which constitutes an impermissible impairment of their constitutionally protected right to vote." *Reynolds* v. *Sims*, *supra*, at 561. We have demanded equality in district population precisely to insure that the weight of a person's vote will not depend on the district in which he lives. The conclusion that a State may, without any articulated justification, deliberately weight some persons' votes more heavily than others, seems to me fundamentally at odds with the purpose and rationale of our reapportionment decisions. Regrettably, today's decision is likely to jeopardize the very substantial gains that have been made during the last four years.

Moreover, if any approach ascribes too much importance to abstract numbers and too little to the realities of malapportionment, it is not *Kirkpatrick*'s demand for precise equality in district population, but rather the Court's own *de minimis* approach. By establishing an arbitrary cut-off point expressed in terms of total percentage variance from the constitutional ideal, the Court fails to recognize that percentage figures tend to hide the total number of persons affected by unequal weighting of votes. In the Texas case, for example, the District Court pointed out that

> "the total deviations for Dallas and Bexar Counties, respectively, amount to about 16,000 people and 5,500 people, for a total of around 21,500 people,

> The percentage deviation figures are only a shorthand method of expressing the 'loss,' dilution, or disproportionate weighting of votes. Just as the Court in *Reynolds* concluded that legislators represent people, not trees or cows, so we would emphasize that legislators represent people, not percentages of people." 343 F. Supp., at 713 n. 5.

Finally, it is no answer to suggest that precise mathematical equality is an unsatisfactory goal in view of the inevitable inaccuracies of the census data on which the plans are based. That argument, which we implicitly rejected in *Kirkpatrick* v. *Preisler, supra,*[8] mixes two distinct questions. In the first place, a state apportionment plan must be grounded on the most accurate available data, and the unreliability of the data may itself necessitate the invalidation of the plan. But once the data is established, the State's constitutional obligation is to achieve the highest practicable degree of equality with reference to the information at hand. In my view, the District Courts properly concluded that neither Texas nor Connecticut had satisfied this obligation. I would therefore affirm both judgments.

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[8] See *Kirkpatrick* v. *Preisler, supra,* at 538–540 (Fortas, J., concurring); *Wells* v. *Rockefeller, supra,* at 554 (WHITE, J., dissenting).